



**Final**

**Urban Water Management Plan**

**2010**

**VOLUME II - Appendices**



Prepared by:



**WINZLER & KELLY**

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September 2011



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## **VOLUME II**

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# CITY OF AMERICAN CANYON

*Napa Valley's New Destination*



February 28, 2011

Don Ridenhour  
Napa County Flood Control and Water Conservation District  
804 First Street  
Napa, CA 94559

Re: Notice of Review and Update to the 2005 Urban Water Management Plan

Dear Mr. Ridenhour:

The City of American Canyon is currently reviewing and updating the City's Urban Water Management Plan (UWMP), as required by law. The UWMP will provide an analysis of projected water demand and supply over the next 25 years, as well as an updated water conservation plan. The 2010 update is due to the California Department of Water Resources by July 1, 2011.

If you are interested in providing input during the preparation of the UWMP, please contact me at (707) 258-1269 or [smoore@cityofamericancanyon.org](mailto:smoore@cityofamericancanyon.org).

Sincerely,

Steven Moore  
Water Systems Manager

cc: Michael W. Throne, Public Works Director  
Mary Grace Pawson, Winzler & Kelly



UWMP Notification - Agencies

AGENCY	ADDRESS	CITY	CONTACT	SALUTATION
Napa County Flood Control and Water Conservation District	804 First Street	Napa, CA 94559	Don Ridenhour	Mr. Ridenhour
Napa County Conservation, Development and Planning	1195 Third St., Room 210	Napa, CA 94559	Hilary Gitelman	Ms. Gitelman
Local Agency Formation Commission	1700 Second St., Ste. 268	Napa, CA 94558	Keene Simonds	Mr. Simonds
Napa Sanitation District	PO Box 2480	Napa, CA 94558	Tim Healy	Mr. Healy
City of Napa Water Division	1340 Clay Street	Napa, CA 94558	Phil Brun	Mr. Brun
City of Vallejo Water Division	202 Fleming Hill Rd.	Vallejo, CA 94589-2337	Erik Nugteren	Mr. Nugteren
City of Rio Vista Public Works	One Main Street	Rio Vista, CA 94571	Morris L. Barr	Mr. Barr
City of Dixon	600 East A Street	Dixon, CA 95620	Nancy Huston	Ms. Huston
Solano County Water Agency	PO Box 349	Elmira, CA 95625	David Okita	Mr. Okita
Solano Irrigation District	508 Elmira Road	Vacaville, CA 95687	David Mansfield	Mr. Mansfield
Reclamation District 2068	7178 Yolano Road	Dixon, CA 95620	Mike Hardesty	Mr. Hardesty

UWMP Notification - Top Ten Water Customers

Company	Address	City	Contact	Salutation	E-Mail	Phone
AmCan Beverages	1201 Commerce Blvd.	American Canyon, CA 94503	Jacob Brothers	Mr. Brothers	<a href="mailto:jabrothers@na.ko.com">jabrothers@na.ko.com</a>	(707) 556-1230
G.L. Mezzetta	105 Mezzetta Ct.	American Canyon, CA 94503	Jeff Mezzetta	Mr. Mezzetta		648-1050
Wallaby Yogurt	110 Mezzetta Ct., Ste. B	American Canyon, CA 94503	Claudia Brown	Ms. Brown	<a href="mailto:claudia@wallabyyogurt.com">claudia@wallabyyogurt.com</a>	553-1233, ext. 302
Culligan	110 Dodd Ct.	American Canyon, CA 94503	Joe Rubino	Mr. Rubino		558-1000
Barrel Ten Quarter Circle	33 Harlow Ct.	Napa, CA 94558	Paul Franzia	Mr. Franzia		258-0550
Foster's Wine Estates	610 Airpark Rd.	Napa, CA 94558	Ed Matovcik	Mr. Matovcik	<a href="mailto:ed.matovcik@fostersgroup.com">ed.matovcik@fostersgroup.com</a>	259-4500
Sutter Home Winery	PO Box 248	St. Helena, CA 94574	Kevin LeMasters	Mr. LeMasters	<a href="mailto:klemasters@tfewines.com">klemasters@tfewines.com</a>	963-5928 ext. 2785
Gaia Hotel	3600 Broadway	American Canyon, CA 94503	Bruce Spangler	Mr. Spangler		674-2100
Cultured Stone	350 Tower Road	Napa, CA 94558	Gloria Maese	Ms. Maese	<a href="mailto:gloria.maese@owenscorning.com">gloria.maese@owenscorning.com</a>	256-4249

UWMP Notification - Developers

Company	Address	City	Contact	Salutation	Phone
Sierra View General Contractor	4160 Douglas Blvd., Ste. 100	Granite Bay, CA 95746	Mark Davis	Mr. Davis	916-774-1000
CDI	955 Franklin St.	Napa, CA 94559	Larry Nelson	Mr. Nelson	224-7135
Dickenson, Peatman & Fogarty	809 Coombs Street	Napa, CA 94559	Cathy Roche	Ms. Roche	252-7122
Elliott Real Estate	1600 Tennessee St.	Vallejo, CA 94590	Bill Elliott	Mr. Elliott	552-8400
Ghisletta Land Development	P.O. Box 208	Napa, CA 94559	Joe Ghisletta	Mr. Ghisletta	224-7826
HCV Pacific Partners LLC	222 Kearney St., Ste. 550	San Francisco, CA 94108	Marsha Ramsey	Ms. Ramsey	415-249-0800
Headwaters Development Co.	50 Fullerton Ct., Ste. 203	Sacramento, CA 95825	Michael Gilbert	Mr. Gilbert	916-564-8899
Jaeger Vineyards	4324 Big Ranch Road	Napa, CA 94558	William Jaeger	Mr. Jaeger	255-4456
Keegan & Coppin Company	477 Devlin Road, #104	Napa, CA 94558	Ron Stauber	Mr. Stauber	252-1400
Lake Street Ventures	1050 University Dr., Ste. 210	Menlo Park, CA 94025	Vincent Butler	Mr. Butler	650-327-0670
McGrath Properties	130 Webster St., Ste. 200	Oakland, CA 94607	Michael Anderson	Mr. Anderson	510-273-2009
Mid-Peninsula Housing Coalition	303 Vintage Park Drive, Ste.250	Foster City, CA 94404	Fran Wagstaff	Ms. Wagstaff	650-356-2900
Napa Valley Gateway	1610 King Avenue	Napa, CA 94559	Charles Slutzkin	Charles	252-8533
Best Properties Group	2580 Sierra Blvd., Ste. E	Sacramento, CA 95825	Scott Best	Mr. Best	916-486-2694
Panattoni Development	8401 Jackson Road	Sacramento, CA 95826	Jim Carlsen	Mr. Carlsen	916-381-1561
R. H. Hess Development	PO Box 3438	Napa, CA 94558	Rick Hess	Mr. Hess	255-8075
Standard Pacific Homes	3825 Hopyard Rd., Ste. 195	Pleasanton, CA 94588	Ken Baki	Mr. Baki	925-847-8700
Stravinski Development Group	413 W. Yosemite Ave., Ste. 105	Madera, CA 93639	Peter Stravinski	Mr. Stravinski	559-674-0906

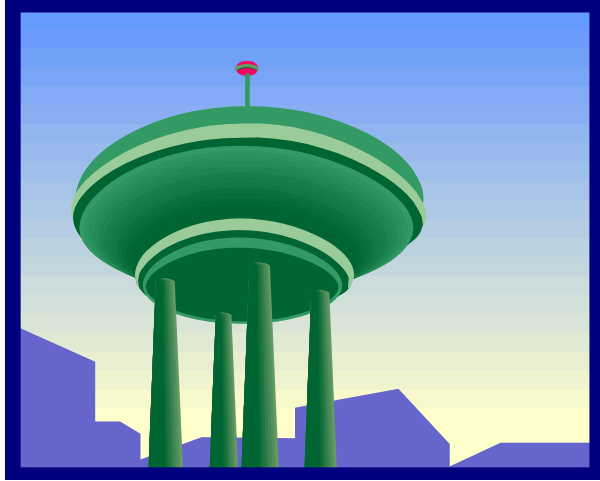








## Planning our Water Future



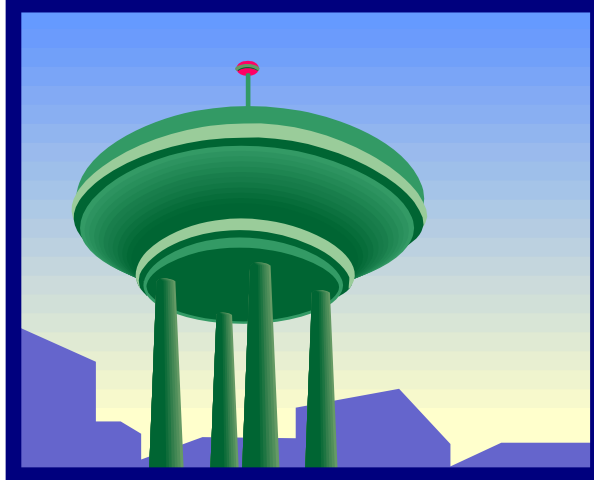
The City of American Canyon is reviewing its 2005 Urban Water Management Plan (UMWP), with the goal of submitting an updated plan to the State by July 1.

The UWMP will analyze the City's water supply and demand over the next 25 years. It will also address our plans to meet a State-mandated goal of reducing per capita water consumption 20% by the year 2020.

Your participation is welcome. Please contact Steve Moore at [smoore@cityofamericancanyon.org](mailto:smoore@cityofamericancanyon.org) if you have questions or comments. You may also call Public Works at (707) 647-4558.

The updated UWMP is tentatively scheduled for City Council consideration on May 17. Draft copies will be available for review at City Hall, 4381 Broadway, or at [www.cityofamericancanyon.org](http://www.cityofamericancanyon.org).

## Planning our Water Future



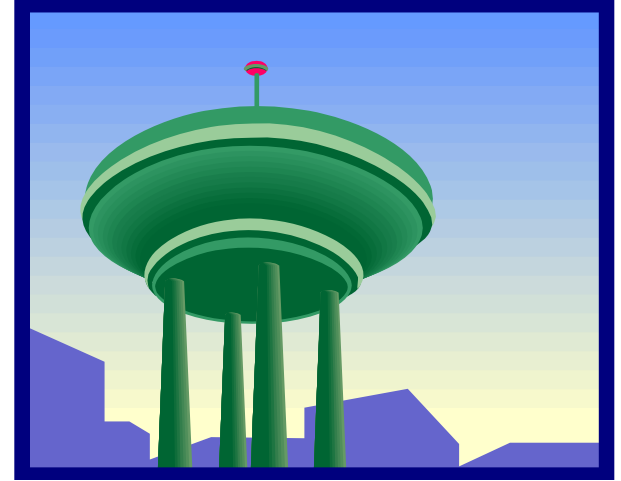
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Your participation is welcome. Please contact Steve Moore at [smoore@cityofamericancanyon.org](mailto:smoore@cityofamericancanyon.org) if you have questions or comments. You may also call Public Works at (707) 647-4558.

The updated UWMP is tentatively scheduled for City Council consideration on May 17. Draft copies will be available for review at City Hall, 4381 Broadway, or at [www.cityofamericancanyon.org](http://www.cityofamericancanyon.org).

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## **Used Oil Recycling Facility Revamped & Improved**



The used oil recycling station at the City's Corporation Yard was recently revamped courtesy of a block grant with Napa County.

It now has a new concrete pad and is fully enclosed for protection from the weather and to ensure compliance with stormwater regulations.

Thank you for disposing of used oil and filters responsibly!

**City of American Canyon  
Corporation Yard  
205 Wetlands Edge Road  
Open Monday through Friday  
8 a.m. to 4:30 p.m.  
(707) 647-4550**

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205 Wetlands Edge Road  
Open Monday through Friday  
8 a.m. to 4:30 p.m.  
(707) 647-4550**







# CITY OF AMERICAN CANYON

*Napa Valley's New Destination*



RECEIVED

MAR - 7 2011

HCV PACIFIC PARTNERS

February 28, 2011

Marsha Ramsey  
HCV Pacific Partners LLC  
222 Kearney St., Ste. 550  
San Francisco, CA 94108

Re: Notice of Review and Update to the 2005 Urban Water Management Plan

Dear Ms. Ramsey:

The City of American Canyon is currently reviewing and updating its Urban Water Management Plan (UWMP), as required by law. The UWMP will provide an analysis of projected water demand and supply over the next 25 years, as well as an updated water conservation plan. The 2010 update is due to the California Department of Water Resources by July 1, 2011.

If you are interested in providing input during the preparation of the UWMP, please contact me at (707) 258-1269 or [smoore@cityofamericancanyon.org](mailto:smoore@cityofamericancanyon.org).

Sincerely,

Steven Moore  
Water Systems Manager

cc: Michael W. Throne, Public Works Director  
Mary Grace Pawson, Winzler & Kelly









# Times-Herald

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916 Cotting Lane  
Vacaville, CA 95501  
707-453-8104

legals@thereporter.com

## RECEIVED

MAR 07 2011

City of American Canyon  
Engineering Division

AMERICAN CANYON, CITY OF  
ATTN: ACCOUNTS PAYABLE  
4381 BROADWAY  
STE 201  
AMERICAN CANYON CA 94503

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MAR 04 2011

CITY OF  
AMERICAN CANYON

Account Number: 2130705

Ad Order Number: 0003891284

Customer's Reference Rebekah-UWMP Feb 2011  
/ PO Number: / UWMP Feb 2011

Publication: Vallejo Times-Herald

Position: Notice of Hearing

Total Amount: \$40.22

Payment Amount: \$0.00

Amount Due: \$40.22

APPROVED FOR PAYMENT  
Mary E. Holstein  
100-405-5204  
WALL-0100

**PROOF OF PUBLICATION  
(2015.5 C.C.P.)**

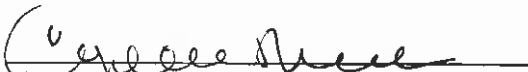
STATE OF CALIFORNIA  
COUNTY OF SOLANO, s.s.

I am a citizen of the United States and a resident of the county of Solano. I am over the age of 18 years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of TIMES-HERALD, P.O. Box 3188 (440 Curtola Parkway), a newspaper of general circulation, printed and published mornings, daily and Sunday in the cities of Vallejo and throughout the county of Solano, and which has been adjudged by the Superior Court of the County of Solano, State of California. The notice of which the attached is a printed copy has been published in each regular and entire issue of said newspaper. And not in any supplement thereof, on the following dates, to wit:

**MARCH 1, 2011**

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Vallejo, California this  
1 TH DAY OF MARCH 2011

  
(Signature)

**CYNTHIA REED**

**PROOF OF PUBLICATION  
VALLEJO TIMES-HERALD**

**Public Notice •**

The City of American Canyon is currently reviewing and updating its Urban Water Management Plan (UWMP). An updated plan is required by law every five years. The 2010 UWMP is due to the California Depart-

ment of Water Resources by July 1, 2011. The UWMP will provide an analysis of projected water demand and supply over the next 25 years, as well as an updated water conservation plan. The public will have an opportunity to review and comment on the draft UWMP. If you have questions or are interested in providing input, please contact Mary Holstein at (707) 647-4558 or mholstein@cityofamericancanyon.org. A draft document will be available for public review at a later date.





**NOTICE OF PUBLIC HEARING  
CITY OF AMERICAN CANYON CITY COUNCIL**

**ADOPTION OF URBAN WATER MANAGEMENT PLAN**

**NOTICE IS HEREBY GIVEN** that the City Council of the City of American Canyon will hold a Public Hearing pursuant to Government Code Section 66018 on Tuesday, September 6, 2011, at City Hall, 4381 Broadway, at 7:30 p.m., or as soon as possible thereafter, to receive comments in consideration of adoption of an updated Urban Water Management Plan (UWMP).

The specific action before the City Council will be to receive public comments regarding a draft update to the Urban Water Management Plan that has been prepared for submittal to the California Department of Water Resources. The Urban Water Management Planning Act requires submittal of a management plan by all urban water suppliers with 3,000 or more connections or agencies that supply at least 3,000 acre feet of water per year. The City of American Canyon has approximately 5,114 connections and supplied approximately 3,118 acre feet of water in 2010. The City's first UWMP was developed in 2005. An update is required every five years.

Copies of the draft Plan have been submitted to interested agencies and are available for public review at the City Clerk's Office and the Public Works Engineering Division at City Hall, 4381 Broadway, American Canyon.

Interested persons may submit their concerns and comments in writing by September 5, 2011, to Steve Moore, Water Systems Manager, at the above address or by e-mail to [smoore@cityofamericancanyon.org](mailto:smoore@cityofamericancanyon.org). They may also appear in person at the hearing and be heard in support of, or in opposition to, adoption of the proposed plan.

All public meetings and events sponsored or conducted by the City of American Canyon are held in accessible sites. Requests for accommodations may be made by calling (707) 647-4577 (voice) or 711 for the California Relay Service, or by e-mailing the ADA Coordinator, Bronda Silva at [bsilva@cityofamericancanyon.org](mailto:bsilva@cityofamericancanyon.org) at least 72 hours in advance of the meeting. Copies of documents distributed at the meeting are available in alternative formats upon request.

**Rebekah Barr  
City Clerk**

**Publication Date:     August 27, 2011  
                                 September 1, 2011**









**RESOLUTION #2011- 68**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON  
ADOPTING THE 2010 URBAN WATER MANAGEMENT PLAN**

**WHEREAS**, the State Legislature signed into law the Water Conservation Act of 2009 (commonly referred to as SBx7-7), which sets a goal of 20 percent reduction in statewide urban per capita water use by year 2020 and requires urban water retailers comply with the Urban Water Management (UWMP) Planning Act to set a community urban water use target for 2020; and

**WHEREAS**, SBx7-7 requires each urban water retailer to determine its 1) base gross gallons per capita per day (gpcd), 2) interim 2015 and final 2020 community water use targets, 3) 5 percent minimum water use reduction requirement, and 4) 2015 and 2020 compliance year gross gpcd and include this information in the 2010 UWMP; and

**WHEREAS**, SBx7-7 requires each urban retail water agency to conduct at least one public hearing to accomplish all of the following: 1) allow community input regarding the urban retail water supplier's implementation plan for complying with this requirement, 2) consider the economic impacts of the urban retail water supplier's implementation plan for complying with this requirement, and 3) adopt a method for determining its community water use targets; and

**WHEREAS**, the Blue Ribbon Committee on Water Resources, a City community advisory group with members appointed by the City Council, recommends adopting the draft 2010 UWMP and using SBx7-7 Method 1 with process water exclusion as the method to determine the community water use target, setting the 2015 interim community water use target at 171 gallons per capita per day, setting the 2020 final community water use target at 152 gallons per capita per day, continuing exploration of all water supply opportunities such as groundwater substitution for raw water irrigation customers and emergency use, and submitting an implementation plan to the City Council.

**WHEREAS**, on September 6, 2011, a public hearing was conducted at a regular meeting of the American Canyon City Council to receive public input in addition to those public meetings conducted by the Blue Ribbon Committee, and wherein the City Council considered the economic impacts of implementing the UWMP.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of American Canyon hereby approves the 2010 Urban Water Management Plan and adopts SBx7-7 Method 1 with process water exclusion as the method to determine the community water use target.

**BE IT FURTHER RESOLVED THAT** the City Council sets the 2015 interim community water use target at 171 gallons per capita per day and the 2020 final community water use target at 152 gallons per capita per day.

**BE IT FURTHER RESOLVED THAT** the City Council affirms the continued search for and exploration of all water supply opportunities such as groundwater substitution and on- or off-stream surface water reservoirs and to bring an implementation plan to the City Council for public review.

**PASSED APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of American Canyon on this 6<sup>th</sup> day of September, 2011, by the following vote:

**Mayor Garcia:**

**Vice Mayor Bennett:**

**Council Member Coffey:**

**Council Member Bennett:**

**Council Member Joseph:**

yes  
yes  
yes  
yes  
yes

Leon Garcia

Leon Garcia, Mayor

**ATTEST:**

Rebekah Barr

Rebekah Barr, MMC, City Clerk

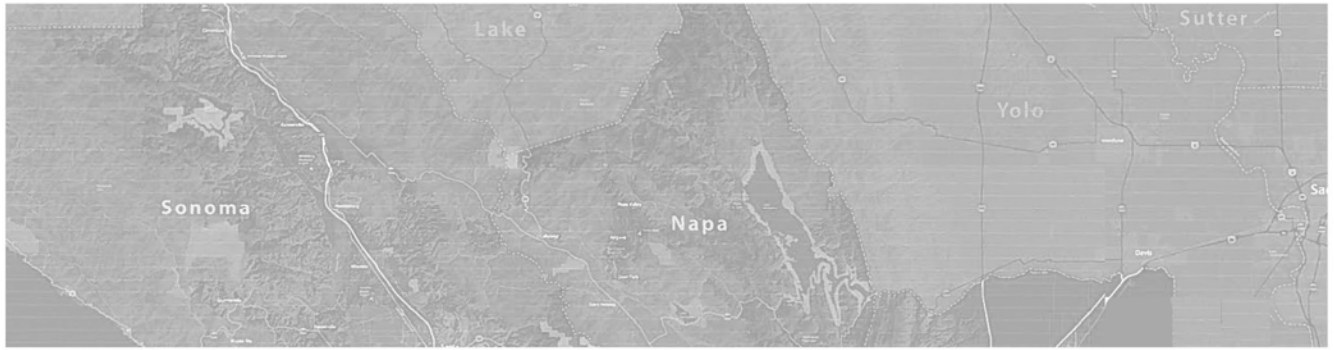
**APPROVED AS TO FORM:**

William D. Ross

William D. Ross, City Attorney



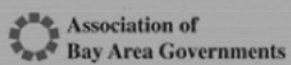




# BayArea **Plan**

## Initial Vision Scenario for Public Discussion

March 11, 2011









## **Initial Vision Scenario**

for Public Discussion

March 11, 2011



METROPOLITAN  
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## **Executive Summary of the Initial Vision Scenario**

In 2008, Senate Bill 375 (Steinberg) was enacted. The state law requires that our Regional Transportation Plan contain a Sustainable Communities Strategy that integrates land-use planning and transportation planning. For the 25-year period covered by the Regional Transportation Plan, the Sustainable Communities Strategy must identify areas within the nine-county Bay Area sufficient to house all of the region's population, including all economic segments of the population. It must also attempt to coordinate the resulting land-use pattern with the transportation network so as to reduce per capita greenhouse-gas emissions from personal-use vehicles (automobiles and light trucks).

The Initial Vision Scenario for Plan Bay Area is a first-cut proposal that identifies the areas where the growth in the region's population might be housed. This proposal builds upon a rich legacy of integrative planning in the Bay Area. For over a decade, the region and its local governments have been working together to locate new housing in compact forms near jobs, close to services and amenities, and adjacent to transit so that the need to travel long distances by personal vehicle is reduced. Compact development within the existing urban footprint also takes development pressure off the region's open space and agricultural lands. We have referred to this type of efficient development as "focused growth," and the regional program that supports it is called FOCUS.

### **Planning for New Housing and Supporting Infrastructure**

The Initial Vision Scenario is constructed by looking first at the Bay Area's regional housing needs over the next 25 years. This analysis was performed using demographic projections of household growth. It is not a forecast of the region, and does not take into account many factors that constrain the region's supply of new housing units, such as limitations in supporting infrastructure, affordable housing subsidies, and market factors. The principal purpose of the Initial Vision Scenario is to articulate how the region could potentially grow over time in a sustainable manner, and to orient policy and program development to achieve the first phases of implementation. Under the assumptions of the Initial Vision Scenario, the Bay Area is anticipated to grow by over 2 million people, from about 7,350,000 today to about 9,430,000 by the year 2035. This population growth would require around 902,000 new housing units. The Initial Vision Scenario proposes where these new units might be accommodated.

In a departure from previous regional growth scenarios, this Initial Vision Scenario is designed around places for growth identified by local jurisdictions. These places are defined by their character, scale, density, and the expected housing units to be built over the long term. Using "place types," areas with similar characteristics and physical and social qualities, ABAG asked local governments to identify general development aspirations for areas within their jurisdictions. These places were mostly the Priority Development Areas (PDAs) already identified through the

FOCUS program. They also included additional Growth Opportunity Areas, some similar to PDAs and others with different sustainability criteria.

Based on local visions, plans and growth estimates, regional agencies distributed housing growth across the region, focusing on PDAs and Growth Opportunity Areas. ABAG in some cases supplemented the local forecast with additional units based on the typical characteristics of the relevant locally-selected place type. ABAG also distributed additional units to take advantage of significant existing and planned transit investment, and it assigned some units to locally identified areas that present regionally significant development opportunities for greater density.

The Initial Vision Scenario accommodates 97 percent of new households within the existing urban footprint. Only 3 percent of the forecasted new homes require “greenfield development” (building on previously undeveloped lands). Priority Development Areas and Growth Opportunity Areas contain about 70 percent of the total growth (743,000 households).

Among counties, three take the lion’s share of growth: Santa Clara, Alameda and Contra Costa absorb a little over two-thirds of the total. These same counties also are anticipated to take the majority of the region’s job growth (64 percent). The region’s three major cities do a lot of the heavy lifting. Thirty-two percent of the forecast and proposed housing growth occurs in San José, San Francisco and Oakland. Seventeen percent goes to medium-sized cities like Fremont, Santa Rosa, Berkeley, Hayward, Concord, and Santa Clara.

The analysis embodied in the Initial Vision Scenario is founded on the location of housing. Employment forecasting and distribution in this Scenario is not directly related to land use policy. Employment location can have a powerful influence on travel demand, vehicle miles traveled, and vehicle greenhouse-gas emissions. In light of these factors and considering economic competitiveness, transit sustainability, and a balanced relationship between employment and housing, regional agencies will be embarking, with local partners, on further analysis regarding appropriate employment locations in relation to future housing growth and the transportation network. This will inform the development of the Detailed Scenarios.

The Initial Vision Scenario reflects the transportation investments from MTC’s current Regional Transportation Plan (known as the Transportation 2035 Plan) with an Express Lane backbone system. It also includes some proposed improvements to the region’s transit network. These include increased frequencies on over 70 local bus and several express bus routes, improved rail headways on BART, eBART, Caltrain, Muni Metro, VTA light-rail, and Altamont Commuter Express, and more dedicated bus lanes in San Francisco and Santa Clara counties, all resulting in overall growth in transit capacity. However, the Bay Area’s transit system is financially unsustainable with operators unable to afford to run the current service levels into the future, much less expanded headways contemplated under the Initial Vision Scenario. MTC’s Transit Sustainability Project will propose a more sustainable transit system for inclusion in the Detailed Scenarios to be tested.

### **Measuring Performance Against Targets**

The Initial Vision Scenario results in a 12 percent per capita greenhouse gas emissions reduction from personal-use vehicles in 2035, compared to a 2005 base year. This reduction falls short of

the region's state-mandated 15 percent per capita greenhouse gas emissions reduction target. It's clear that additional strategies will need to be employed if we want to attain the greenhouse gas targets, and other targets previously adopted by ABAG and MTC.

MTC and ABAG have adopted a set of Plan Bay Area performance targets to describe in specific, measureable terms the region's commitment and progress toward to the "three E" principles of sustainability (Economy, Environment, and Equity). The Initial Vision Scenario meets several regional targets, including accommodating all the projected housing need by income level (in other words, no more in-commuting by workers who live in other regions); reducing the financial burden of housing and transportation on low-income households by providing more affordable housing; and housing the majority of new development within the existing urban core. Also, more residents are projected to ride transit, walk and bike more than existing residents because much of the new housing is located close to services, amenities and jobs, and adjacent to transit in complete communities.

The Initial Vision Scenario brings more residents into the region, thus increasing the total amount of travel. Some residents will still drive for some trips. Even though vehicle miles traveled per capita in the Bay Area are projected to be lower in the Initial Vision Scenario than it is today, total miles driven within the region is projected to increase. With more Bay Area Residents and more miles driven within the region, we can also expect an increase in the total number of injuries and fatalities. Health impacts from exposure to particulate emissions from automobiles and trucks are likewise projected to worsen with more driving; however, state and federal efforts to clean up heavy duty truck engines will more than off-set the increases from automobiles, resulting in overall reductions sooty particulate pollution.

Finally, it must be said that while bringing more people into the Bay Area will increase the amount of driving and collisions within the region, it is still a net win in the larger sense. The amount of overall driving and greenhouse gas emissions statewide is certainly less than if the new residents were commuting to Bay Area jobs from communities in neighboring regions that do not offer such amenities.

### **Next Steps**

The Initial Vision Scenario is offered as basis for discussion with local governments, stakeholders, and the general public about how the Bay Area can accommodate all its population growth over the next quarter century. It is by no means a fait accompli. Over the next several months we will seek input through elected official briefings, local government staff discussions, and public workshops. The comments received will assist ABAG and MTC in developing a range of Detailed Scenarios and testing feasible land-use/transportation alternatives that achieve the greenhouse gas emission reduction targets.

The purpose of the SCS is to forge consensus in the Bay Area on a preferred long-term regionwide growth pattern. Under SB 375, local governments are explicitly not required to update their general plans in accordance with the SCS. The SCS does not carry the same authority as Regional Housing Needs Allocation but it will inform the distribution of housing at the local level. The adopted SCS land development pattern will help guide regional policies and investments that are made pursuant to the Regional Transportation Plan. These regional policies

and investments are intended to create financial and other incentives to implement the adopted land pattern in the SCS. ABAG is currently working with its Housing Methodology Committee to develop a methodology for distributing regional eight-year housing targets to Bay Area local jurisdictions; the methodology will be adopted by ABAG later this year.

The Initial Vision Scenario kicks off a two-year conversation among local jurisdictions and regional agencies on what ultimately will become the forecasted Sustainable Communities Strategy, as a part of Plan Bay Area. During that time, the regional agencies will engage local agencies and the public to help identify and assess several detailed Sustainable Communities Strategy scenarios that demonstrate ways that land-use strategies, transportation investments, pricing and other strategies could achieve our adopted goals and targets. The scenarios also will need to address how the Bay Area's land use plans can assist adaptation to climate change. The Sustainable Communities Strategy will need to coordinate regional agencies' initiatives and requirements related to sea-level rise, air quality, and other climate change related issues.

These Detailed Scenarios will lead to selection of a preferred scenario early next year that would include an integrated transportation investment and land-use plan; this plan would also undergo a detailed environmental impact review that local agencies could use to streamline environmental assessments of their own local development projects as provided for in SB 375. Finally, the ABAG and MTC boards would be asked to adopt the complete Plan Bay Area, including a Sustainable Communities Strategy, by April 2013.

This report includes five major sections. First, the introduction describes the development rationale for the Initial Vision Scenario and regional and local challenges. Second, the regional growth section describes the overall population, household, and employment growth, household distribution under the Initial Vision Scenario, the performance of this scenario against targets, and the preliminary results of an equity analysis. Third, the regional growth analysis is developed into narratives for each county. Fourth, the key priorities and potential strategies section describes the preliminary tools to be considered for the implementation of the proposed development. Fifth, the next steps section describes the process of interaction with local jurisdictions and stakeholders and the analytical tasks for the Detailed Scenarios. The appendix includes a glossary that defines the terms used throughout the report and a table describing the place types.







City of American Canyon  
Population Projections for UWMP 2010

Revised 8/17/11

Sources:

California Department of Finance, Census 2010, Generated on 3/8/2011

Table P-X: Housing Projections (in dwelling units) for Service Area

	2005	2010	2015	2020	2025	2030	2035
PDA <sup>1</sup>	--	--	320	640	960	1,280	1,600
Town Center <sup>2</sup>	--	--	533	1,067	1,600	1,600	1,600
Housing Element <sup>3</sup>	--	--	0	392	0	0	0
Outside <sup>4</sup>		28	29	30	31	32	33

106.6667

<sup>1</sup> According to the planning department, 1600 residential dwelling units will be added in the PDA by 2035.

<sup>2</sup> According to the planning department, the Town Center development will add 1600 units by 2025.

<sup>3</sup> The housing element indicates that for 2007-2014 98 units per year (avg) would be constructed; revise timeline to 2013-2020.

<sup>4</sup> From 2005 to 2010, one new outside residential account was added. It is assumed one OR account will be added per 5 year period through 2035; there are 28 outside-city residential accounts as of 2010).

Table P-1: Population Projections for Service Area

	2005	2010	2015	2020	2025	2030	2035
<u>City Limits only</u>							
Existing Census (in-city) <sup>1</sup>		19,454	19,454	19,454	19,454	19,454	19,454
PDA <sup>2</sup>	--	--	1,088	2,176	3,264	4,352	5,440
Towne Center <sup>2</sup>	--	--	1,813	3,627	5,440	5,440	5,440
Housing Element <sup>2</sup>	--	--	0	1,333	0	0	0
<b>Subtotal - City Limits</b>		<b>19,454</b>	<b>22,355</b>	<b>26,589</b>	<b>28,158</b>	<b>29,246</b>	<b>30,334</b>
<u>Outside City Limits</u>							
Outside <sup>3</sup>	--	78	81	84	87	90	92
<b>Total</b>		<b>19,532</b>	<b>22,437</b>	<b>26,673</b>	<b>28,245</b>	<b>29,336</b>	<b>30,426</b>

29519

Notes:

<sup>1</sup> 2010 population based on DOF, Census based numbers, in report generated 3/8/2011.

<sup>2</sup> Population projections are based on 3.4 persons per household as calculated from the US Census 2010 for within the City limits. For purposes of the UWMP, this average is used for both single-family and multi-family household units. It is acknowledged that the average is likely to be higher for single-family and slightly lower for multi-family units.

<sup>3</sup> Population projections are based on 2.8 persons per household for residences outside the City limits, but within the service area.







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Appendix D.1

Zero Water Footprint Policy





## **CITY OF AMERICAN CANYON**

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### **COUNCIL AGENDA STAFF REPORT**

**Meeting Date: May 17, 2011**  
**CONSENT ITEM: 3**

#### **SUBJECT:**

Confirm the adoption by the City Council on May 3, 2011, of Administrative Policy 2011-03 on the implementation of the Zero Water Footprint policy.

#### **SUBMITTED BY:**

Michael Throne, PE, Public Works Director

#### **BACKGROUND AND ISSUES:**

The City Council at its May 3, 2011, regular meeting reviewed and approved a proposed administrative policy on the implementation of the 2007 Zero Water Footprint policy, intended to provide best management practices for consistent implementation.

#### **FISCAL IMPACT:**

There is no immediate financial impact of establishing a policy for best management practices. There may be incremental increases in water enterprise fund revenues but these are unknown at this time.

#### **ENVIRONMENTAL DETERMINATION:**

The establishment of a policy does not constitute a project under California Environmental Quality Act Section 15378(b) (5), as this government activity will not result in direct or indirect physical changes in the environment or a reasonably foreseeable indirect physical change.

#### **ALTERNATIVES/IMPACTS:**

Not applicable.

#### **STAFF RECOMMENDATIONS:**

Confirm the adoption by the City Council on May 3, 2011, of Administrative Policy 2011-03 on the implementation of the Zero Water Footprint policy.

**Attachments:** Resolution with Administrative Policy 2011-03

**Copies to:** BRC Membership

## **RESOLUTION**

### **ADOPTING ADMINISTRATIVE POLICY 2011-03 IMPLEMENTING THE ZERO WATER FOOTPRINT POLICY**

**WHEREAS**, it is the primary mission of the City of American Canyon to provide safe and reliable drinking water to the City's residential, commercial, and industrial customers; and

**WHEREAS**, it is the City's responsibility to provide water connections and services first to customers inside the city limits, the Napa Airport Industrial Area Specific Plan, or to those private developments pending annexation into the City before attempting to accommodate customer requests in unincorporated county areas; and

**WHEREAS**, the management and allocation of existing raw water delivered by the State Water Project and from other sources is essential to ensure adequate amounts of water for existing agricultural irrigation; and

**WHEREAS**, the management and allocation of the American Canyon recycled water supply is essential to ensure adequate amounts of water for landscape irrigation, which will decrease the use of treated water for those purposes; and

**WHEREAS**, it is an obligation of the City to manage its raw (untreated) and recycled water supplies and provide treated water in a manner that balances customer needs, fiscal limitations, environmental concerns, and regulatory constraints; and

**WHEREAS**, the Zero Water Footprint (ZWF) policy adopted by the American Canyon City Council on October 23, 2007, defines a zero water footprint as "No loss in reliability or increase in water rates for existing water service customers due to requested increased demand for water within the City's Water Service Area" and is a critical component of the City's long-term water conservation effort and urban water management plan; and

**WHEREAS**, the reliable delivery of treated water is contingent on management and allocation of treated water resources by the implementation of policies that ensure adequate amounts of water for domestic consumption; and

**WHEREAS**, the City will utilize best management practices to assign or shift commercial, industrial, and new residential subdivision water demand from the water supplied by the State Water Project to the reliable alternate sources of water; and

**WHEREAS**, at a regularly scheduled meeting of the City Council on May 3, 2011, the City Council adopted Administrative Policy 2011-03 implementing the Zero Water Footprint Policy.

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of American Canyon hereby confirms the adoption of Administrative Policy 2011-03 (Exhibit A, attached hereto) implementing of the Zero Water Footprint Policy that is intended to:

- Provide fair and equal treatment of all water customers presently served by the City of American Canyon.



- Identify customers who would benefit by converting from raw (untreated) or treated water to the recycled water system or other alternate water supplies.
- Incorporate best management practices when implementing the Zero Water Footprint policy.

**PASSED, APPROVED AND ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 17<sup>th</sup> day of May, 2011, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
**Leon Garcia, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Rebekah Barr, City Clerk**

\_\_\_\_\_  
**William D. Ross, City Attorney**



## EXHIBIT A

City of American Canyon

### ADMINISTRATIVE POLICY IMPLEMENTATION OF THE ZERO WATER FOOTPRINT POLICY

Date Adopted May 3, 2011

Policy Number 2011-03

Last Revised \_\_\_\_\_

**SUBJECT:** Implementation of the 2007 Zero Water Footprint Policy

**PURPOSE:** To provide best management practices for consistent implementation.

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#### Policy Goal

Utilizing best management practices assign or shift commercial, industrial, and new residential subdivision water demand from water supplied by the State Water Project to more reliable alternate sources of water.

#### Policy Objectives

This policy will be accomplished by using the following best management practices:

1. Acquiring alternate water supplies that are more reliable than the State Water Project.
  - a. Using the Urban Water Management Plan and planning documents such as the Recycled Water Implementation Plan as guideposts, the city could consider expanding the recycled water system; exploring conjunctive use, groundwater, and groundwater recharge; partnering with other agencies to develop surface or recycled water storage facilities; and investing in options such as desalination and rainwater harvesting.
2. Offering to existing commercial and industrial customers the option of assignment to alternate water supplies.
  - a. This objective would assist in improving reliability and affording some level of drought protection. Options should be offered in 5- or 10-year blocks that coincide with the updating of the urban water management plan, which would enable commercial and industrial customers a longer planning period.
3. Defining the baseline zero water footprint (ZWF) as the water demand from an approved will-serve letter, water supply report, or water contract; the water demand calculated from an audit of three-years of water use; or, absent other information, the water demand in 2007.

- a. A project being designated as compliant with the ZWF policy allows findings of no significant impact as it relates to water pursuant to CEQA guidelines. This objective provides several avenues for the city to determine the ZWF in the years to come.
4. Assigning new residential subdivision, commercial, and industrial customers to alternate water supplies if the customer is unable to achieve a ZWF by available conservation methods.
5. Assigning increased demand from existing commercial and industrial customers to alternate water supplies if the customer is unable to achieve a ZWF with available conservation methods.
  - a. As it is not often feasible to achieve a ZWF purely through conservation measures, policy objectives 4 and 5 satisfy the requirement that new or increased demand is offset with an actual water supply or the reduction in water demand by another customer.
6. Issuing will-serve letters and water supply reports to all residential subdivision, commercial, and industrial customers and to all new discretionary permits.
  - a. Water supply reports will be prepared in accordance with City Council Resolution No. 2006-53 and City-County Agreement No. 2008-93 and document the specific water demand (domestic, irrigation, process, etc.), the water source or sources serving the customer, and estimated water fees (water capacity and consumption).
  - b. Water audits will also be included in the condition section of the will-serve letter and would be included as a condition of approval for all new discretionary permits.
7. Establishing a water demand mitigation/conservation "tool box" for customer use.
  - a. Formulation of a "tool box" that would be available to water customers would expand the options described in the 2007 ZWF policy and Municipal Code § 13.10. The options would be intended to mitigate water demand so that the project could achieve a ZWF. To accomplish this objective, it will be necessary to modify Municipal Code § 13.10.010.1.3 to include the "tool box" concept and allow for the selection of options that may present themselves in the future.
8. Recovering indirect overhead and depreciation costs borne by the City related to supply and delivery of alternate water supplies.
  - a. In 2006, the City Council adopted a cost recovery plan that sought to ensure that all costs associated with overhead and depreciation were collected and allocated properly.

### **Zero Water Footprint Mitigation "Tool Box"**

In addition to measures described in Municipal Code §13.10.010, the following will be available, including but not limited to:

- Retrofitting existing residences with direct-install low-flow fixtures such as toilets, showerheads and faucet aerators.
- Purchasing otherwise developable land as permanent open space.
- Acquisition of other water supply resources.
- "Cash for Grass" program that will offer residents an incentive to replace thirsty lawns with low-water use plants, permeable hardscape, or other water saving, environmentally friendly products and technology as they become available.
- Irrigation, plant selection and plant care workshops and rebates for composting bins, mulch, and environmentally friendly fertilizer.
- Demonstration Gardens in high visibility locations that will showcase innovative, low-water use and native plant communities that are not only low-water use but beautiful.
- Low Income Leak Detection and Repair Program for qualifying residents.
- Rebates for irrigation devices such as Rain Sensor Shutoff Retrofit and SMART Controllers.
- Installation and operation of a weather station that could be accessed by residents, contractors and local schools and students for science projects.
- Contributing toward the expansion of the recycled water system.
- And other measures that may arise in the future proposed by the City and accepted by the applicant.









**American Canyon Municipal Code**[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)[No Frames](#)[Title 13 WATER SERVICE SYSTEM](#)**Chapter 13.10 NEW WATER AND SEWER CONNECTIONS AND SERVICES****13.10.010 Legislative findings.**

The city council of the city finds and declares the following:

- A. Under state law, the city may provide water and sewer connections and service to residences and businesses within its corporate boundaries before committing to provide water and sewer connections and services to developments outside city limits;
- B. The city has approved and may have applications in the future for new developments for residential, commercial and industrial uses that will require water and sewer connections and service;
- C. Applications for the annexation of various properties to the city and the American Canyon fire protection district, a subsidiary district of the city (district) are currently pending before the Napa County local agency formation commission (LAFCO), and other applications may be submitted in the future from time to time;
- D. Applications for new developments that will require large amounts of water which will be located in unincorporated county territory are pending before the county of Napa (county) and to date, applications for the annexation of these developments into the city have not been filed with LAFCO;
- E. The city's primary obligation as a local government is to provide water and sewer connections and service within its boundaries or to those developments where applications for annexation to the city are pending before LAFCO, rather than to developments in unincorporated county territory;
- F. The city is committed to the prudent management of its resources and to its economic growth and development;
- G. Notwithstanding the foregoing, consistent with the City-County Agreement, the city will provide water service to all outside customers and other outside customers upon request under all of the same terms and conditions under which the city provides water service to city customers, and the city will not impose any term or condition on any water service to any outside customer and other outside customers that is different from the terms and conditions that the city imposes on city customers, except that the city may continue to impose higher water rates on outside customers and other outside customers consistent with Hansen v. City of San Buenaventura (1986) 42 Cal.3d 1172;
- H. The city shall continue to provide water service to existing outside customers and other outside customers and, upon request, the city shall provide new or increased water service to all outside customers and other outside customers under the same terms and conditions under which the city provides water service to city customers, as provided in subsection G of this section. The city shall provide all new city customers, all new outside customers and other outside customers with water service under the conditions set forth in subsection I of this section;
- I. Water Conditions to be Imposed on all Parcels (City Customers, Outside Customers and Other Outside Customers) for which New Water Service is Requested.

The city may impose the conditions listed below on new water services for outside customers and other outside customers by including these conditions in the "will-serve" letters that the city provides to such customers, but only if the city also imposes the same conditions on all new water services for parcels with similar uses within the city's limits. Napa County shall include these same conditions in all new land use development permits for parcels within the Airport Industrial Area Specific Plan area.

1. **City Capacity Fees and Conditions of Approval for Water Service.** Capacity fees charged for parcels within the city's water service area shall be established by the city and will be periodically reviewed and updated. Capacity fees (also known as connection fees) will be uniform throughout the water service area, regardless of whether the parcel to which the fee applies is inside or outside the city's limits. The capacity fee and any conditions on new water service will be determined based on the Water Supply Report, which shall contain the analysis described in the

City-County Agreement Part II.C. of Exhibit F, and which will be consistent with the city's Zero Water Footprint Policy, adopted by the city on October 23, 2007, or as may be subsequently amended.

2. **Cost of Water Service.** The cost of new water service shall be imposed through the capacity fees in the city's Ordinance 2007-09 or through new capacity fees approved by Napa County and enacted in a new city ordinance. However, if the Water Supply Report finds, consistent with the city's Zero Water Footprint Policy or as may be subsequently amended (see City-County Agreement Exhibit F), that the city will have to obtain additional water supplies to meet "dry year" shortfalls, then the cost of water to meet such "dry year" shortfalls will be the sole responsibility of the applicant. In determining whether or not such "dry year" shortfalls will occur, the city shall include in the base supplies available to the city during "dry years" the new water supplies that have been or will be included in the calculations used to set the city's capacity fees and water rates. The city will conclude that "dry year" shortfalls will occur only if such base supplies will not be adequate to meet anticipated "dry year" demands. The city may not impose any costs on the applicant under this section to reimburse the city for any capital or operating costs that have been or will be included in the calculations used to set the city's capacity fees or water rates. The city may impose the additional costs described in the preceding sentence on outside customers and other outside customers only if the city also imposes such additional costs uniformly on city customers.

3. **Maximum Allowable Water Use.** Water received from the city for use on parcels within the Airport Industrial Area Specific Plan area and on parcels with similar uses within the city's limits and other outside customers with similar uses shall be limited to an average of six hundred fifty gallons of water per day per acre (measured monthly), and applicants for new or increased city water service for all such parcels shall be required to demonstrate to the city while the city is preparing the Water Supply Report for the applicant the maximum extent to which the applicant can further reduce its water consumption by applying the following best management practices:

- a. **No Flow or Low Flow Fixtures.** These applicants shall be required to install no flow or low flow water fixtures, and to implement other reasonable water conservation measures that are described in the city's Water Conservation Guidelines adopted in the city's Resolution No. 2008-08 or in new city water conservation guidelines approved by Napa County and adopted in a new city ordinance or resolution.
- b. **Drought Tolerant Landscape and Irrigation with Recycled Water.** These applicants shall be required to use only drought tolerant landscaping, and they may only irrigate landscaped areas with recycled water, when it is available.
- c. **Purple Pipe.** These applicants shall be required to dual plumb their buildings and install "purple pipe" in all landscape areas in anticipation of the availability of recycled water and shall use the recycled water when available.
- d. These applicants shall follow the water conservation methods that are described in the Water Conservation Guidelines adopted in the city's Resolution No. 2008-08 or in new city water conservation guidelines approved by Napa County and adopted in a new city ordinance or resolution.

The city may apply the provisions of this paragraph to applicants for new or increased city water service for parcels within the Airport Industrial Area Specific Plan area only if the city also uniformly applies these provisions to all applicants for new or increased city water service for parcels with similar uses within the city's limits and other outside customers.

4. **Water Offsets.** Applicants for city water service for parcels within the Airport Industrial Area Specific Plan area and for parcels with similar uses within the city's limits and other outside customers with parcels with similar uses that wish to use more than an average of six hundred fifty gallons of water per day per acre (measured monthly) shall offset the proposed water use over six hundred fifty gallons per day per acre (measured monthly) through the use of one or more options that are made available by the city to the applicants. These options include, but are not limited to, retrofitting of existing residences with low flow fixtures, purchase of otherwise developable land as permanent open space, or acquisition of other water supply resources as provided for by a water supply analysis that follows the Zero Water Footprint Methodology, or as may be subsequently amended, described in Exhibit F to the City-County Agreement. The city shall make all such options available uniformly to applicant for city water service for parcels within the Airport Industrial Area Specific Plan area and for parcels with similar uses within the city's limits and other outside customers with parcels with similar uses, and that seek such offsets.

5. Drought Restrictions. To the extent permitted by law, the city may curtail or ration the use of water provided by the city below the limit of six hundred fifty gallons per day per acre (measured monthly) in dry years through the imposition of drought restrictions that are uniformly applied throughout the city's water service area.

J. For purposes of this Chapter 13, "city customers" shall mean all persons and entities presently receiving water service from the city, and all persons and entities that are requesting or in the future request new or increased water service from the city, for parcels that are located within city's incorporated limits.

K. For purposes of this Chapter 13, "outside customers" shall mean all persons and entities presently receiving water service from the city, and all persons and entities that are requesting or in the future request new or increased water service from the city for parcels that are located outside the city's limits but within the Airport Industrial Area Specific Plan boundaries.

L. For purposes of this Chapter 13, "other outside customers" shall mean all persons and entities presently receiving water service from the city, and all persons and entities that are requesting or in the future request new or increased water service from the city for parcels that are located outside the city's limits but not within the Airport Industrial Area Specific Plan boundaries. (Ord. 2008-08 §§ 1, 3, 2008; Ord. 2000-04 § 1 (part), 2000)

#### **13.10.020 Priority of service.**

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A. The city shall give first priority for new water and sewer connections and services to residences and businesses located within the city corporate boundaries.

B. Notwithstanding the foregoing, consistent with the City-County Agreement, the city will provide water service to all outside customers and other outside customers upon request under all of the same terms and conditions under which the city provides water service to city customers, and the city will not impose any term or condition on any water service to any outside customer and other outside customers that is different from the terms and conditions that the city imposes on city customers, except that the city may continue to impose higher water rates on outside customers and other outside customers consistent with *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172.

C. Applicants for water service from other outside customer applicants must comply with all standards applicable to outside customers set forth in this chapter and in the discretion of the city, applicants may be required to enter into a revenue sharing agreement. (Ord. 2008-08 §§ 2, 4, 2008; Ord. 2000-04 § 1 (part), 2000)

#### **13.10.030 Exemptions.**

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Notwithstanding the provisions of Section 13.10.020 of this chapter, city may provide water and sewer connections and services to developments outside of city limits, but within the urban limit line area or the water service area of city when it is established that there is a vested right to such connections or services under agreement or as otherwise provided by state law. Interested parties claiming a vested or other legal right to water or sewer connections or service which predated the adoption of the ordinance codified in this chapter may advance such a claim and appeal to the city council pursuant to Chapter 2.04 of this code. (Ord. 2000-04 § 1 (part), 2000)

#### **13.10.040 General requirements and limitations on will-serve letters issued to developments outside city's corporate limits.**

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Unless otherwise agreed to in writing by the city council, any development outside the city's corporate boundaries must agree to the following conditions, in order to receive city water and/or sewer services:

A. The applicant must clearly define the project being proposed, including the estimated water or sewage services required;

B. The applicant must agree to abide by the rules and regulations of the city, including the payment of any and all fees and charges, unless otherwise specified in writing;

- C. The applicant must agree to waive any protest to the city's forty percent surcharge on outside city water customers, established to offset the tax and other revenue loss to the city by not annexing into the city;
- D. The applicant must agree to grant any required utility or access easements that may be reasonably required by the city;
- E. The applicant must agree to pay a nonrefundable deposit of five percent of the engineer's estimated costs of all required on- and off site public water and/or sewer facilities, in order to cover plan check and inspection charges;
- F. In the event the applicant's estimated or actual water consumption exceeds the city's per acre water limit, currently at six hundred fifty gallons of water per day per acre, then the applicant must agree to any one or a combination of the following conditions:
1. Reduce or redesign the project to reduce overall water consumption to a point at or below the city's limit, including but not limited to, a more aggressive water conservation program, or the use of recycled water whenever possible,
  2. Integrate additional land into the project, which is also within the city's water service area, in such a manner that the overall consumption for the entire area is at or below the city's limit, or
  3. Agree to advance the costs to enhance the city's water supply, treatment and/or delivery system in order to compensate for the extra water demand. Any costs in excess of the project's fair share will be credited against the project's connection fees or be reimbursed to the applicant, as future development occurs;
- G. The applicant shall connect to city's wastewater collection and treatment system, if the applicant's project is within the city's sewer service area, unless the city council finds it creates an undue hardship on applicant;
- H. To the extent practical, the applicant must agree to utilize recycled water in its business operations or for landscaping and irrigation purposes, if and when it becomes available to applicant;
- I. The city may impose any other requirements that are appropriate to the specific development being proposed, such as but not limited to, participation in a benefit assessment district;
- J. No will-serve letter shall be valid for a period greater than two years, unless specified in the letter itself;
- K. Any changes to the project description may void the letter, at the sole discretion of the city council; and
- L. In granting a will-serve letter, city makes no determination as to land use entitlements required for the proposed project, and the issuance shall not be construed to be an expression of city's position regarding the use or intensity of use of the development property.
- M. Notwithstanding the foregoing, consistent with the City-County Agreement, the city will provide water service to all outside customers and other outside customers upon request under all of the same terms and conditions under which the city provides water service to city customers, and the city will not impose any term or condition on any water service to any outside customer and other outside customers that is different from the terms and conditions that the city imposes on city customers, except that the city may continue to impose higher water rates on outside customers and other outside customers consistent with *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172. (Ord. 2008-08 § 5, 2008; Ord. 2000-04 § 1 (part), 2000)

#### **13.10.050 Declaring outdated will-serve letters to be null and void.**

Any will-serve letter issued two years prior to the effective date of the ordinance codified in this chapter, and for which no building permit has been issued, shall be considered null and void, and shall have no effect whatsoever on city. Furthermore, the will-serve letter will be void if the use for which it was intended has changed substantially, as determined by city council. (Ord. 2000-04 § 1 (part), 2000)





## **City of American Canyon**

### **ADMINISTRATIVE POLICY MANAGEMENT AND ALLOCATION OF RAW WATER**

Date Adopted \_\_\_\_\_

Policy Number \_\_\_\_\_

Last Revised \_\_\_\_\_

**SUBJECT:** Management and allocation of raw water delivered by the State Water Project and from other sources

**PURPOSE:** To effectively manage water allocated to American Canyon by the State Water Project to ensure adequate amounts of water is available for agricultural irrigation and residential consumption and commercial use.

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#### **Policy Goal**

It is the goal of this policy to ultimately shift all existing raw water customers to alternate water supplies.

#### **Policy Objectives**

This policy will be accomplished by:

1. Providing existing raw water agricultural irrigation customers with water amounts that are reasonably similar to historic raw water deliveries.
2. Maintaining raw water service to existing agricultural irrigation customers until such time as the customer(s) no longer has the need for raw water or has converted to alternate supplies at which time raw water service will be discontinued.
3. Making reasonable efforts to plan and deliver alternative sources of water to new and existing agricultural irrigation customers instead of providing raw water.
4. Identifying customers near existing recycled water systems and work with them to convert to the recycled water supply.
5. Establishing a water conservation and efficient water management program for agricultural irrigation customers that are unable to connect to an existing recycled water system or use an alternative water supply.
6. Executing and renewing raw water supply contracts for all agricultural irrigation customers with terms and conditions that reflect best management practices and industry norms.

#### **Implementation of Policy Objectives**

**Policy Objective 1:** A 10-year water consumption history will be compiled from available records to assist in establishing usage trends. However, unless the agricultural irrigation customer acquires

*DRAFT FOR REVIEW*

## Management and Allocation of Raw Water Policy

January 1, 2011

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*DRAFT FOR REVIEW*

additional water supplies that can feasibly be delivered to them by American Canyon (or by agreement with another water purveyor) no increases in seasonal water delivery will occur.

Policy Objective 2: Upon notice from the customer that they have converted to an alternate water supply or have ceased agricultural land uses, the water service lateral and meter will be permanently disconnected from the water system. Raw water service will not be reinstated.

Policy Objective 3: The City will implement the recycled water system master plan as funding allows.

Policy Objective 4: A property owner or mutual water company within the jurisdiction of the city and abutting on any street in which there is now located or may in the future be located a public recycled water system of the jurisdiction of the city, or another public purveyor that receives permission from the city to supply recycled water to the property owner, would be required at their expense to connect its agricultural irrigation system directly with the public recycled water system within 180-days after the date of an official notice to do so provided that the public recycled water system is within 500-feet of the nearest point of the property.

Policy Objective 5: A program such as one described in the Agricultural Water Conservation and Management Act of 1992 (California Water Code § 10520 et.seq.) will be used to accomplish this goal for customers that are greater than 500-feet from a public recycled water system.

Policy Objective 6: All agricultural irrigation contracts entered into after January 1, 2011 will include terms and conditions based on this policy and as outlined in the attached, which may be amended from time-to-time to reflect changes in practices, norms, regulations, and legal considerations.

California Government Code Section 56133, which regulates new or extended public utility services including water, will be followed for new agricultural irrigation customers outside of the extraterritorial water service area as defined by Local Area Formation Commission.

### Fees and Charges

Raw water quantity/monthly service charges will be made pursuant to the municipal code. Raw water capacity fees will be assessed using the most likely alternate water supply capacity fee available at the time of the raw water contract.

### Attachments

- Terms and conditions for agricultural irrigation service

### References

- California Government Code § 56133
- Agricultural Water Conservation and Management Act of 1992 (California Water Code §10520 et.seq.)



*DRAFT FOR REVIEW*

**Terms and Conditions for Agricultural Irrigation Contracts**

CONTRACT PROVISION	POTENTIAL CONDITION
Duration	10- to 25-years
Volume, acre-feet per year	Depends on need; Property owner will provide calculations based on County of Napa prescribed formulas to calculate water use; A water supply report will be required
Capacity fee	Fees will be assessed using the most likely alternate water supply capacity fee available at the time of the raw water contract; would not prevent a negotiated one-time fee; service connection (and meter size) should be sized to defined demand to avoid "consumption creep"
Water consumption/monthly service charge	Rates identified and set by ordinance
Water quality	Based on water type supplied: raw water has no standard; City produces recycled water compliant with Title 22
Delivery restrictions	Curtailement or otherwise restrict delivery due to drought, mandated cutbacks or natural/manmade disasters
Water source	Needs to be specific; may affect delivery restrictions
Penalty for excessive use	Financial, leading up to disconnection
Resale	Prohibited
Cross-connection	Prohibited; Cross-connection testing is required on a regular basis; Repairs or other modifications are required
Assignment from one property owner to another	Prohibited; Irrigation contract runs with the property owner
Environmental impact	Environmental analysis and document may be required to identify impact(s)
Connection to recycled water system	Should it be required if service becomes available? What conditions would make it deemed "available?"
Agricultural or land use changes	City shall be noticed when changes in land or agricultural use (crop following) alter water demand









**CITY OF AMERICAN CANYON**

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**COUNCIL AGENDA STAFF REPORT**

**Meeting Date: May 17, 2011**  
**CONSENT: 2**

**SUBJECT:**

Confirm the adoption by the City Council on May 3, 2011 of Administrative Policy 2011-02 on the management and allocation of recycled water.

**SUBMITTED BY:**

Michael Throne, PE, Public Works Director

**BACKGROUND AND ISSUES:**

The City Council at its May 3, 2011 regular meeting reviewed and approved a proposed administrative policy on the management and allocation of recycled water, intended to effectively manage the recycled water or alternate water supplies and identify customers who would benefit from converting from raw (untreated) or treated water to those other supplies.

**FISCAL IMPACT:**

There is no immediate financial impact of establishing a policy for the management and allocation of water supply. There may be incremental increases in water enterprise fund revenues but these are unknown at this time.

**ENVIRONMENTAL DETERMINATION:**

The establishment of a policy does not constitute a project under California Environmental Quality Act Section 15378(b) (5) as this government activity will not result in direct or indirect physical changes in the environment or a reasonably foreseeable indirect physical change.

**ALTERNATIVES/IMPACTS:**

Not applicable.

**STAFF RECOMMENDATIONS:**

Confirm the adoption by the City Council on May 3, 2011 of Administrative Policy 2011-02 on the management and allocation of recycled water.

**Attachments:** Resolution with Administrative Policy 2011-02

**Copies to:** BRC Membership

## **RESOLUTION**

### **ADOPTING ADMINISTRATIVE POLICY 2011-02 ON THE MANAGEMENT AND ALLOCATION OF RECYCLED WATER**

**WHEREAS**, it is the primary mission of the City of American Canyon to provide safe and reliable drinking water to the City's residential, commercial, and industrial customers; and

**WHEREAS**, it is the City's responsibility to provide water connections and services first to customers inside the city limits, the Napa Airport Industrial Area Specific Plan, or to those private developments pending annexation into the City before attempting to accommodate customer requests in unincorporated county areas; and

**WHEREAS**, the management and allocation of existing raw water delivered by the State Water Project and from other sources is essential to ensure adequate amounts of water for existing agricultural irrigation; and

**WHEREAS**, the management and allocation of the American Canyon recycled water supply is essential to ensure adequate amounts of water for landscape irrigation, which will decrease the use of treated water for those purposes; and

**WHEREAS**, it is an obligation of the City to manage its recycled water supplies and provide treated water in a manner that balances customer needs, fiscal limitations, environmental concerns, and regulatory constraints; and

**WHEREAS**, the reliable delivery of treated water is contingent on management and allocation of treated water resources by the implementation of policies that ensure adequate amounts of water for domestic consumption; and

**WHEREAS**, at a regularly scheduled meeting of the City Council on May 3, 2011, the City Council adopted Administrative Policy 2011-02 on the management and allocation of recycled water.

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of American Canyon hereby confirms the adoption of Administrative Policy 2011-02 (Exhibit A attached hereto) for the management and allocation of recycled water that is intended to:

- Provide fair and equal treatment of all water customers presently served by the City of American Canyon.
- Identify customers who would benefit by converting from raw (untreated) or treated water to the recycled water system or other alternate water supplies.
- Provide for the effective management of recycled water to ensure adequate amounts for irrigation use.

**PASSED, APPROVED AND ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 17<sup>th</sup> day of May, 2011, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Leon Garcia, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Rebekah Barr, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney





## EXHIBIT A

### City of American Canyon

#### ADMINISTRATIVE POLICY MANAGEMENT AND ALLOCATION OF RECYCLED WATER

Date Adopted May 3, 2011

Policy Number 2011-02

Last Revised \_\_\_\_\_

**SUBJECT:** Management and allocation of recycled water or other sources of supply.

**PURPOSE:** Effective management of recycled water to ensure adequate amounts for irrigation use.

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#### Policy Goal

To the extent recycled water is available, the City intends to provide recycled water as a substitute for treated water as a first priority to city parks and then to other users for irrigation purposes.

#### Policy Objectives

This policy will be accomplished by:

1. Providing sustainable recycled water to eligible users within the recycled water service area.
2. Making reasonable efforts to plan and deliver recycled water in satisfactory amounts to maintain prescribed landscaping maintenance service levels or needs.
3. Identifying users near existing recycled water systems and work with them to convert to the recycled water supply or other source of supply or facilitating connection to an alternate recycled water supplier.
4. Establishing a water conservation and efficient water management program for irrigation users that are unable to connect to an existing recycled water system or use an alternative water supply.
5. Maximizing the availability of recycled water for all users by encouraging users to store recycled water.
6. Establishing a quantity charge and capacity fee that reflects the direct and indirect costs to operate, maintain and expand the recycled water system.

## Implementation of Policy Objectives

Policy Objective 1: Regular operation of the system began in March 2010 with the completion of the one million gallon recycled water storage tank, the pumping station at the wastewater treatment plant and major segments of the distribution system. The looped system will be completed with the installation of the distribution main through upcoming private development projects east of Highway 29. Recycled water for construction use ("trucked water") and during plant establishment periods is available. Eligible users of recycled water at this time are city parks and open spaces and parcels zoned commercial and industrial. Residential parcels may be added in the future if there is adequate supply. An eligible user may be granted relief from Municipal Code Section 13.14.065 (the requirement to connect to and use recycled water) if it can be demonstrated by the user that no irrigation water is required after the plant establishment period and that recycled water was used to establish the plantings.

Policy Objective 2: The City will implement the recycled water implementation plan and provide recycled water that is compliant with Title 22 regulations, which is suitable for plant and turf irrigation, and expand the system as funding allows. Any desired use that needs reclaimed water to meet standards beyond plant and turf requirements shall be at the sole cost of the end user.

Policy Objective 3: The City will implement the recycled water system master plan as funding allows. An alternative source of recycled water if it is economically feasible may be available from the Napa Sanitation District or through coordination and cooperation with the North Bay Water Reuse Authority. A water supply agreement for such an alternative connection would be required between the agency and the City.

Policy Objective 4: A program such as one described in the Agricultural Water Conservation and Management Act of 1992 (California Water Code § 10520 et seq.) will be used to accomplish this goal for users that are farther than 200-feet from a public recycled water system.

Policy Objective 5: Private storage of recycled water will be encouraged and may be required if it becomes necessary to stretch supply or manage daily, seasonal and peak demands.

Policy Objective 6: Recycled water is effectively a new supply of water for use by customers inside the recycled water service area. It is therefore the intent of the City to prepare a rate and fee analysis that establishes in a fair and equitable manner the revenue requirements required to operate, maintain and expand the recycled water system. Such an analysis would ascertain appropriate quantity/monthly service charges and capacity fees and would be approved by the American Canyon City Council after a public hearing process.

## References

- Section 13.14.065 Recycled water service required. American Canyon Municipal Code.
- Agricultural Water Conservation and Management Act of 1992 (California Water Code §10520 et seq.)







## **CITY OF AMERICAN CANYON**

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### **COUNCIL AGENDA STAFF REPORT**

**Meeting Date: May 17, 2011**  
**CONSENT ITEM: 3**

#### **SUBJECT:**

Confirm the adoption by the City Council on May 3, 2011, of Administrative Policy 2011-03 on the implementation of the Zero Water Footprint policy.

#### **SUBMITTED BY:**

Michael Throne, PE, Public Works Director

#### **BACKGROUND AND ISSUES:**

The City Council at its May 3, 2011, regular meeting reviewed and approved a proposed administrative policy on the implementation of the 2007 Zero Water Footprint policy, intended to provide best management practices for consistent implementation.

#### **FISCAL IMPACT:**

There is no immediate financial impact of establishing a policy for best management practices. There may be incremental increases in water enterprise fund revenues but these are unknown at this time.

#### **ENVIRONMENTAL DETERMINATION:**

The establishment of a policy does not constitute a project under California Environmental Quality Act Section 15378(b) (5), as this government activity will not result in direct or indirect physical changes in the environment or a reasonably foreseeable indirect physical change.

#### **ALTERNATIVES/IMPACTS:**

Not applicable.

#### **STAFF RECOMMENDATIONS:**

Confirm the adoption by the City Council on May 3, 2011, of Administrative Policy 2011-03 on the implementation of the Zero Water Footprint policy.

**Attachments:** Resolution with Administrative Policy 2011-03

**Copies to:** BRC Membership

## **RESOLUTION**

### **ADOPTING ADMINISTRATIVE POLICY 2011-03 IMPLEMENTING THE ZERO WATER FOOTPRINT POLICY**

**WHEREAS**, it is the primary mission of the City of American Canyon to provide safe and reliable drinking water to the City's residential, commercial, and industrial customers; and

**WHEREAS**, it is the City's responsibility to provide water connections and services first to customers inside the city limits, the Napa Airport Industrial Area Specific Plan, or to those private developments pending annexation into the City before attempting to accommodate customer requests in unincorporated county areas; and

**WHEREAS**, the management and allocation of existing raw water delivered by the State Water Project and from other sources is essential to ensure adequate amounts of water for existing agricultural irrigation; and

**WHEREAS**, the management and allocation of the American Canyon recycled water supply is essential to ensure adequate amounts of water for landscape irrigation, which will decrease the use of treated water for those purposes; and

**WHEREAS**, it is an obligation of the City to manage its raw (untreated) and recycled water supplies and provide treated water in a manner that balances customer needs, fiscal limitations, environmental concerns, and regulatory constraints; and

**WHEREAS**, the Zero Water Footprint (ZWF) policy adopted by the American Canyon City Council on October 23, 2007, defines a zero water footprint as "No loss in reliability or increase in water rates for existing water service customers due to requested increased demand for water within the City's Water Service Area" and is a critical component of the City's long-term water conservation effort and urban water management plan; and

**WHEREAS**, the reliable delivery of treated water is contingent on management and allocation of treated water resources by the implementation of policies that ensure adequate amounts of water for domestic consumption; and

**WHEREAS**, the City will utilize best management practices to assign or shift commercial, industrial, and new residential subdivision water demand from the water supplied by the State Water Project to the reliable alternate sources of water; and

**WHEREAS**, at a regularly scheduled meeting of the City Council on May 3, 2011, the City Council adopted Administrative Policy 2011-03 implementing the Zero Water Footprint Policy.

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of American Canyon hereby confirms the adoption of Administrative Policy 2011-03 (Exhibit A, attached hereto) implementing of the Zero Water Footprint Policy that is intended to:

- Provide fair and equal treatment of all water customers presently served by the City of American Canyon.

- Identify customers who would benefit by converting from raw (untreated) or treated water to the recycled water system or other alternate water supplies.
- Incorporate best management practices when implementing the Zero Water Footprint policy.

**PASSED, APPROVED AND ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 17<sup>th</sup> day of May, 2011, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
**Leon Garcia, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Rebekah Barr, City Clerk**

\_\_\_\_\_  
**William D. Ross, City Attorney**





## EXHIBIT A

City of American Canyon

### ADMINISTRATIVE POLICY IMPLEMENTATION OF THE ZERO WATER FOOTPRINT POLICY

Date Adopted May 3, 2011

Policy Number 2011-03

Last Revised \_\_\_\_\_

**SUBJECT:** Implementation of the 2007 Zero Water Footprint Policy

**PURPOSE:** To provide best management practices for consistent implementation.

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#### Policy Goal

Utilizing best management practices assign or shift commercial, industrial, and new residential subdivision water demand from water supplied by the State Water Project to more reliable alternate sources of water.

#### Policy Objectives

This policy will be accomplished by using the following best management practices:

1. Acquiring alternate water supplies that are more reliable than the State Water Project.
  - a. Using the Urban Water Management Plan and planning documents such as the Recycled Water Implementation Plan as guideposts, the city could consider expanding the recycled water system; exploring conjunctive use, groundwater, and groundwater recharge; partnering with other agencies to develop surface or recycled water storage facilities; and investing in options such as desalination and rainwater harvesting.
2. Offering to existing commercial and industrial customers the option of assignment to alternate water supplies.
  - a. This objective would assist in improving reliability and affording some level of drought protection. Options should be offered in 5- or 10-year blocks that coincide with the updating of the urban water management plan, which would enable commercial and industrial customers a longer planning period.
3. Defining the baseline zero water footprint (ZWF) as the water demand from an approved will-serve letter, water supply report, or water contract; the water demand calculated from an audit of three-years of water use; or, absent other information, the water demand in 2007.

- a. A project being designated as compliant with the ZWF policy allows findings of no significant impact as it relates to water pursuant to CEQA guidelines. This objective provides several avenues for the city to determine the ZWF in the years to come.
4. Assigning new residential subdivision, commercial, and industrial customers to alternate water supplies if the customer is unable to achieve a ZWF by available conservation methods.
5. Assigning increased demand from existing commercial and industrial customers to alternate water supplies if the customer is unable to achieve a ZWF with available conservation methods.
  - a. As it is not often feasible to achieve a ZWF purely through conservation measures, policy objectives 4 and 5 satisfy the requirement that new or increased demand is offset with an actual water supply or the reduction in water demand by another customer.
6. Issuing will-serve letters and water supply reports to all residential subdivision, commercial, and industrial customers and to all new discretionary permits.
  - a. Water supply reports will be prepared in accordance with City Council Resolution No. 2006-53 and City-County Agreement No. 2008-93 and document the specific water demand (domestic, irrigation, process, etc.), the water source or sources serving the customer, and estimated water fees (water capacity and consumption).
  - b. Water audits will also be included in the condition section of the will-serve letter and would be included as a condition of approval for all new discretionary permits.
7. Establishing a water demand mitigation/conservation "tool box" for customer use.
  - a. Formulation of a "tool box" that would be available to water customers would expand the options described in the 2007 ZWF policy and Municipal Code § 13.10. The options would be intended to mitigate water demand so that the project could achieve a ZWF. To accomplish this objective, it will be necessary to modify Municipal Code § 13.10.010.1.3 to include the "tool box" concept and allow for the selection of options that may present themselves in the future.
8. Recovering indirect overhead and depreciation costs borne by the City related to supply and delivery of alternate water supplies.
  - a. In 2006, the City Council adopted a cost recovery plan that sought to ensure that all costs associated with overhead and depreciation were collected and allocated properly.

### **Zero Water Footprint Mitigation "Tool Box"**

In addition to measures described in Municipal Code §13.10.010, the following will be available, including but not limited to:

- Retrofitting existing residences with direct-install low-flow fixtures such as toilets, showerheads and faucet aerators.
- Purchasing otherwise developable land as permanent open space.
- Acquisition of other water supply resources.
- "Cash for Grass" program that will offer residents an incentive to replace thirsty lawns with low-water use plants, permeable hardscape, or other water saving, environmentally friendly products and technology as they become available.
- Irrigation, plant selection and plant care workshops and rebates for composting bins, mulch, and environmentally friendly fertilizer.
- Demonstration Gardens in high visibility locations that will showcase innovative, low-water use and native plant communities that are not only low-water use but beautiful.
- Low Income Leak Detection and Repair Program for qualifying residents.
- Rebates for irrigation devices such as Rain Sensor Shutoff Retrofit and SMART Controllers.
- Installation and operation of a weather station that could be accessed by residents, contractors and local schools and students for science projects.
- Contributing toward the expansion of the recycled water system.
- And other measures that may arise in the future proposed by the City and accepted by the applicant.







## **ORDINANCE 2009-03**

### **AN ORDINANCE OF THE CITY OF AMERICAN CANYON, STATE OF CALIFORNIA, ESTABLISHING A WATER CONSERVATION PLAN**

**WHEREAS**, the City Council of the City of American Canyon is concerned about the health, safety and welfare of its water customers; and

**WHEREAS**, when dry conditions prevail, the general welfare requires that the City's available water resources be put to the maximum beneficial use to every extent possible; and

**WHEREAS**, the cooperation of all City water customers is required to prevent the waste or unreasonable use of water during drought conditions, including conservation efforts with the view to the reasonable and beneficial use of water in the interest of all water customers and the greater public welfare.

**NOW, THEREFORE**, the City Council of American Canyon does hereby ordain as follows:

Ordinance No. 29, adopted as an emergency ordinance by the American Canyon County Water District on June 4, 1991, and as amended by Emergency Ordinance No. 30 on June 18, 1991, and as amended by Emergency Ordinance No. 32 on August 6, 1991, is hereby repealed.

**SECTION 1.** Section 13.14 of the City of American Canyon Municipal Code is added to *Title 13, Water Service Systems*, to read as follows:

#### **ARTICLE I. TITLE, PURPOSE AND GENERAL PROVISIONS**

##### **13.14.010 Title**

This chapter shall be known as the "Water Conservation Plan" of the City of American Canyon and may be so cited.

##### **13.14.020 Purpose and Intent**

The purpose of this ordinance is to have a plan for water conservation resulting from a reduced supply of water such as may result from drought, water supply shortages, or limitations of water delivery conditions.

Nothing in this ordinance will preclude the City Council from passing an emergency resolution for the immediate curtailment of water use by its customers due to water supply shortages and delivery limitations caused by catastrophic events and conditions, either natural or unnatural.

#### 13.14.030 Definitions

The terms used in this chapter shall have the following meanings:

- A. The "City" means the City of American Canyon acting by and through the City of American Canyon Public Works Department as operator of the City of American Canyon water system.
- B. "Manager" is the City Manager of the City of American Canyon.
- C. "Public Works Director" is the Public Works Department head of the City of American Canyon.
- D. "Customer" means any person, firm, partnership, association, corporation, company, organization, or governmental entity, whether within or without the geographic boundaries of the City of American Canyon, who uses water supplied by the City.
- E. "GPD" means gallons per day.
- F. "Water" means potable water.

#### 13.14.040 Authorization

The City Manager or his or her designee, is authorized and directed to implement the applicable provisions of this chapter upon adoption of a City Council resolution determining that such implementation is necessary to protect the public health, safety, and welfare.

#### 13.14.050 Application

The provisions of this chapter shall apply to all persons, customers, and property served by the City.

#### 13.14.060 Water Waste Prohibitions

Non-essential uses: No customer of the City shall use, or permit the use of, potable water from the City for residential, commercial, institutional, industrial, agricultural, or other purpose for the following nonessential uses:

1. The escape of water through breaks or leaks within the customer's plumbing or private distribution system for any substantial period of time within which such break or leak should reasonably have been discovered and corrected. It shall be presumed that a period of seventy-two (72) hours after the customer discovers such a break or leak or receives notice from the City, is a reasonable time within which to correct such a break or leak or, at a minimum, to stop the flow of water from such break or leak;



2. Irrigation in a manner or to an extent which allows excessive run-off of water or unreasonable over-spray of the areas being watered. Every customer is deemed to have his/her water system under control at all times, to know the manner and extent of his/her water use and any run-off, and to employ available alternatives to apply irrigation water in a reasonably efficient manner;
3. Washing cars, boats, trailers or other vehicles and machinery directly with a hose not equipped with a shutoff nozzle;
4. Water for non-recycling decorative water fountains;
5. Water for single-pass evaporative cooling systems for air conditioning in all connections installed after the effective date of this ordinance, unless required for health or safety reasons;
6. Water for new non-recirculating conveyor car wash systems; and
7. Water for new non-recirculating industrial clothes wash systems.

Exempt Water Uses: All water use associated with the operation and maintenance of fire suppression equipment or employed by the City for water quality flushing and sanitation purposes shall be exempt from the provisions of this section. Use of water supplied by a private well or from a reclaimed wastewater or rain water utilization system is also exempt.

#### 13.14.070 Water Conservation Stages

No customer of the City shall make, cause, use, or permit the use of water from the City for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this chapter, or in an amount in excess of that use permitted by either Conservation Stage 2 or 3 when in effect as declared by separate resolution of the City Council, in accordance with the provisions of this Chapter.

During a declared drought emergency, the fees and charges for “voluntary” requests for leak inspections and water audits shall be waived.

- A. Stage 1. Voluntary Conservation. In order to achieve an overall system-wide reduction goal of 10 percent, all potable water customers of the City shall be requested to:
1. Apply irrigation water only during the evening and early morning hours to reduce evaporation losses.
  2. Inspect all irrigation systems, repair leaks, and adjust spray heads to provide optimum coverage and eliminate avoidable over-spray.
  3. For irrigation valves controlling water applied to lawns, vary the minutes of run-time consistent with fluctuations in weather.
  4. Reduce minutes of run-time for each irrigation cycle if water begins to run-off to gutters and ditches before the irrigation cycle is completed.

5. Utilize water conservation incentive, rebate and giveaway programs to replace water guzzling plumbing fixtures and appliances with water efficient models.
6. Utilize City information regarding using water efficiently, reading water meters, repairing ordinary leaks, and water efficient landscape.

B. Stage 2. Mandatory Compliance - Water Alert. The City Council may by resolution declare a Conservation Stage 2 upon recommendation by the City Manager based on water supply and delivery projections by the Public Works Director that an overall system-wide reduction of 20 percent is necessary. The reduction shall be based upon the amount of water used during that base period defined as the amount of water used on a customer's premises during the corresponding monthly billing period in the previous year. New services or services without a prior year billing history shall be allotted on comparable customer usage. In order to achieve an overall system-wide reduction of 20 percent, the following activities shall be prohibited:

1. Gardening and landscape irrigation utilizing individual sprinklers or sprinkler systems on lawns, gardens, landscaped areas, trees, shrubs, or other plants is prohibited except during the hours of 12:01 AM to 12:00 noon and from 6:00 PM to 12:00 midnight, provided, however, that irrigation of lawns, gardens, landscaped areas, trees, shrubs, or other plants is permitted at anytime if:
  - a. a hand-held hose is used, or
  - b. a hand-held, faucet-filled bucket of five (5) gallons or less is used, or
  - c. a drip irrigation system is used.
2. The washing of automobiles, trucks, trailers, boats, airplanes, and other types of mobile equipment is prohibited except between the hours of 12:01 AM to 12:00 noon and from 6:00 PM to 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket, or hand-held hose equipped with a positive shutoff nozzle used for quick rinses. Washing may be done at any time on the immediate premises of a commercial car wash whose primary business is car washing.

EXCEPTION: Washing may be exempted from the foregoing requirements upon written approval by the City Manager, if the public health, safety, and welfare are contingent upon frequent vehicle cleaning, such as garbage trucks and vehicles to transport food and perishables.
3. The refilling or initial filling of water to a swimming pool is prohibited.

4. The operation of any ornamental fountain or other structure making similar use of water is prohibited except for those fountains/structures with a recycling system which recycles 75 percent of the water in the system. The use of treated water to fill, refill, or maintain the level of any fountain is prohibited.
5. Use of water from fire hydrants shall be limited to fire fighting and other activities necessary to maintain the health, safety, and welfare of the citizens of American Canyon.
6. The following uses of water are defined as "waste of water" and are absolutely prohibited:
  - a. allowing water to run off to a gutter, ditch, or drain;
  - b. failing to repair a controllable leak;
  - c. washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, unless the concrete foundation is in the process of curing during construction, and except to alleviate immediate fire hazards.
  - d. use of potable water to irrigate grass, lawns, ground-cover, shrubbery, crops, trees or other vegetation between the hours of 12:00 noon and 6:00 PM or in such a manner as to result in runoff for more than five minutes.
7. All restaurants are prohibited from serving water to customers except when specifically requested by the customer.
8. The use of water, treated or untreated, for use in earth compaction, dust control, or other construction use, including the testing of new sewer lines, is prohibited, unless the water is obtained from a source approved by the City, provided, however, notwithstanding the foregoing, treated water may be used for purposes of testing new water service lines.
9. Withdrawal of water from fire hydrants within the service area of the City, except for purposes of fire fighting and water system maintenance, is prohibited.
10. Water use by a vehicle washing facility in excess of 20 percent less than the amount used by the facility during the corresponding billing period in the prior year.

- C. Stage 3. Mandatory Compliance - Water Emergency. The City Council may, by resolution, declare a Conservation Stage 3 upon recommendation by the City Manager based on water supply and delivery projections by the Public Works Director that an overall system-wide reduction of 30 percent is necessary. The reduction shall be based upon the amount of water used during that base period defined as the amount of water used on a customer's premises during the corresponding monthly billing period in the previous year. New services or services without a prior year billing history shall be allotted on comparable customer usage. In order to achieve an overall system-wide reduction of 30 percent, the following activities shall be prohibited:
1. Any activities prohibited during a Conservation Stage 2.
  2. Watering any residential lawn, or any commercial or industrial area lawn irrigated with potable water, at any time of day or night.
  3. Planting any new landscaping, except for designated drought resistant landscaping prescribed by the City Manager or designated representative.
  4. All day and night-time irrigation sprinkling unless only a hand-held nozzle is used. An exception will be made to permit drip irrigation for established perennial plants and trees using manual or automatic time-controlled water application.
  5. Planting of new annual plants, vegetables, flowers or vines.
- D. Stage 4. Mandatory Compliance - Severe Water Emergency. The City Council may, by resolution, declare a Conservation Stage 4 upon recommendation by the City Manager based on water supply and delivery projections by the Public Works Director that an overall system-wide reduction of 50 percent is necessary. The reduction shall be based upon the amount of water used during that base period defined as the amount of water used on a customer's premises during the corresponding monthly billing period in the previous year. New services or services without a prior year billing history shall be allotted on comparable customer usage. In order to achieve an overall system-wide reduction of 50 percent, the following activities shall be prohibited:
1. Any activities prohibited during a Conservation Stage 1; 2, or 3.
  2. Mandatory water rationing based on established water banks in effect.

#### 13.14.080 Mandatory Conservation Phase Implementation

After the City Council, by resolution, declares a Conservation Stage 2, 3 or 4, the City Manager shall order that the appropriate stage of water conservation be implemented in accordance with the applicable provisions of this chapter. Said order shall be made by public announcement; shall be published a minimum of one (1) time in a daily newspaper of general circulation, and shall continue to be published on a weekly basis until such time as all restrictions are removed.

#### 13.14.090 Duration of Conservation Stages

Mandatory stages shall be effective upon the effective date of this ordinance and may be implemented as authorized by City Council resolution. Current conservation stages as

authorized by City Council will be modified at such time that conditions indicate a more or less restrictive stage is necessary.

**13.14.100 Drought Surcharge**

- A. Customers will receive prior notification of the standard allotment basis, applicable rates, and the opportunity to request exceptions to the standard allotment basis.
- B. Water use beyond the maximum allowed for each water conservation stage shall be subject to a drought surcharge pursuant to the schedule set forth below. The customer of record may request an increase in this basic allotment as set forth in Section 13.14.110 hereof. Application forms and instructions will be available at the American Canyon City Hall.
- C. In addition to the general water service rates, each customer shall pay, during each billing period, a drought surcharge for water delivered in excess of the basic allotment. The surcharge is as follows:
  - Up to 10% in excess of allotment = 1.0 times the applicable volume charge
  - 10.01 to 20% in excess of allotment = 2.0 times the applicable volume charge
  - Over 20% in excess of allotment = 3.0 times the applicable volume charge
- D. Customers whose water usage falls in Tier 1 of the rate schedule are assumed to have maximized their conservation effort and will not be subject to a drought surcharge if their water consumption is not further reduced.
- E. In addition to the drought surcharge, if drought usage exceeds the allowed allotment, a warning will be issued and enforcement actions may be taken as described in Section 13.14.120.
- F. Customers who are willing to pay a premium for water may be allowed to do so, assuming that their higher usage does not compromise the City's ability to provide water to its other customers.

**13.14.110 Exceptions and Application Procedures for Exceptions**

Any customer of the City may make written application for an exception. Said application shall describe in detail why applicant believes an exception is justified.

- A. The City Manager may grant exceptions for use of water otherwise prohibited by this section upon finding and determining that failure to do so would cause an emergency condition affecting the health, sanitation, fire protection or safety of the applicant or public; or, cause an unnecessary and undue hardship on applicant or the public, including but not limited to, adverse economic impacts, such as loss of production or jobs.
- B. In the event of an appeal of a drought surcharge, customers who can clearly

demonstrate that they have taken steps to reduce their water consumption (by installing water efficient appliances, drip irrigation, drought tolerant landscaping, etc.) shall be considered favorably in granting waivers.

- C. No increase in the basic water allotment shall be granted unless the customer has installed all water-saving devices which are feasible. Water saving devices include: (1) ultra-low flush toilets utilizing 1.6 gallons per flush or less; (2) low-flow shower heads; (3) low-flow faucet restrictors utilizing 2 gallons per minute or less; (4) drip irrigation systems.
- D. The decision of the City Manager may be appealed to the City Council by submitting a written appeal to the City Clerk within fifteen (15) calendar days of the date of the decision. Upon granting any appeal, the City Council may impose any conditions it determines to be just and proper. Exceptions granted by the City Council shall be prepared in writing and the City Council may require the exception be recorded at applicant's expense.

#### 13.14.120 Violation - Enforcement

The violation of each provision of this chapter, and each separate violation thereof, shall be deemed a separate offense, and shall be enforced accordingly.

- A. Any customer that violates any provision of this ordinance shall, in addition to the imposition of the drought surcharge rates of Section 13.14.100 hereof, receive a personal contact by the City at the address of the water service. If personal contact is unsuccessful, written notice of the violation, including a date that the violation is to be corrected, may be left on the premises, with a copy of the notice sent by Certified Mail to the customer.
- B. If after issuance of the written warning, the Manager determines that the customer has continued or is continuing to violate the provisions of this chapter, the Manager may authorize and implement installation of a flow restricting device on the service line or reduce the amount of water available to the customer. Any costs incurred by the City to authorize and implement the flow restricting device or reduce the amount of water available to the customer shall be borne by the customer. The flow restricting device shall be removed and the prior water supply amount resumed no sooner than sixty (60) days after the date of the installation of the flow restricting device or a reduction in water available, provided that no further violations have occurred within that time.

- C. If after implementation of a flow restricting device or reduction of water available to a customer, the customer continues to violate the provisions of the ordinance, the City may disconnect the service to the customer for a period of three (3) days. All costs or expenses incurred by the City for enforcement of this section shall be borne by the customer.
- D. The unauthorized use of water following a disconnection of service pursuant to Section 13.14.120 (C) above, or any other unauthorized use of water from a fire hydrant or other use bypassing an installed meter, shall be subject to an automatic fine of \$2,500.00 for the first offense and \$5,000.00 for the second offense.

#### **13.14.130 Violation - Penalties**

In addition to all other remedies provided herein, any person who violates any provision of this chapter after having received a written notice to refrain as provided in Section 13.14.120 (A) is guilty of an infraction. The violation of each provision of this chapter and each separate violation thereof shall be deemed a separate offense and shall be punished accordingly. Each offense shall be punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one year; and
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one year.

#### **13.14.140 Violation – Additional Remedy**

As an additional remedy, the violation of any provision of this chapter by any person who has received more than one written warning pursuant to Section 13.14.120 (A) to refrain from the same or any other violation under this chapter in one calendar year shall be deemed and is declared to be, a public nuisance and may be subject to abatement in accordance with the City of American Canyon Municipal Code.

### **SECTION 2. Severability**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

### **SECTION 3. Effective Date**

This ordinance shall become effective 30 days after the date of adoption.

### **SECTION 4. Posting**

The City Clerk shall cause this ordinance to be published and/or posted within fifteen (15) days after its adoption.

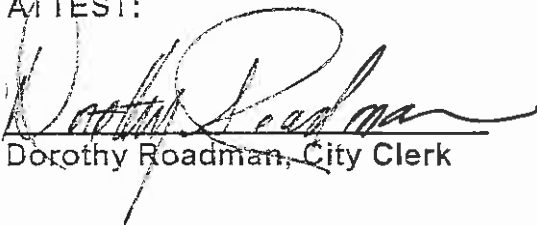
THE FOREGOING ORDINANCE was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 3<sup>rd</sup> day of February, 2009, and was approved and adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 17<sup>th</sup> day of February, 2009, by the following vote:

AYES:	Garcia, Callison, Bennett, Coffey, West
NOES:	None
ABSTAIN:	None
ABSENT:	None



Leon Garcia, Mayor

ATTEST:

  
Dorothy Roadman, City Clerk

APPROVED AS TO FORM:

  
William D. Ross, City Attorney











#423 - Cler. Office

13

CONTRACT FOR WATER SUPPLY FROM NORTH BAY AQUEDUCT  
BETWEEN  
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AND  
AMERICAN CANYON COUNTY WATER DISTRICT

Jan. 4, 1967  
C. E. MERRY, Clerk  
H. J. Price  
Deputy Clerk

THIS CONTRACT made and entered into this 15th day of November,  
1966, by and between NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT, a public agency in the State of California created and  
existing under and by virtue of Chapter 1449 of the 1951 Statutes  
of California, as amended, hereinafter referred to as "the Agency"  
and AMERICAN CANYON COUNTY WATER DISTRICT, a public body of the  
State of California, hereinafter referred to as "American Canyon",

WITNESSETH:

The parties hereto agree as follows:

1. Definitions:

(a) "The State contract" means the water supply contract  
between the State of California and the Agency dated December 19,  
1963, together with Amendment No. 1 thereto dated September 22, 1964.

(b) Each of the terms defined in Article 1 of the State  
contract shall have the same meaning in this contract unless dis-  
tinctly expressed or manifestly incompatible with the intent hereof.

(c) "North Bay Aqueduct" means the project transportation  
facilities from Lindsay Slough into Napa County.

(d) "The Solano portion of the North Bay Aqueduct" means  
those reaches of the North Bay Aqueduct from Lindsay Slough to the  
Cordelia pumping plant, which are expected to be completed in 1980.

(e) "The Napa portion of the North Bay Aqueduct" means

1.

RECEIVED  
AUG 5 1967

ENGINEERING & ROAD DEPT.  
COUNTY OF NAPA

those reaches of the North Bay Aqueduct from the Cordelia pumping plant into Napa County.

(f) "Member Unit" means any city, water district or other entity (including American Canyon) which enters into a contract with the Agency for a water supply delivered through the North Bay Aqueduct.

2. Term of contract: This contract shall become effective on the date first above written and thereafter shall remain in effect throughout the term of the State contract. SUB  
COM  
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3. Quantity:

(a) Subject to the provisions of this Agreement, the Agency will make available for delivery to American Canyon the amounts of project water designated in Table A attached hereto and made a part hereof.

(b) If, from time to time, on the basis of studies conducted jointly by the parties, it is determined that the water requirements of American Canyon from the North Bay Aqueduct are different from those set forth in Table A, the parties by mutual agreement may amend Table A, provided that the quantities therein set forth shall not be decreased unless all member units of the Agency collectively have contracted for the entire entitlement of the Agency under the State contract and one or more member units other than American Canyon shall then contract for such decrease.

4. Source of water: From the year of initial water delivery until the Solano portion of the North Bay Aqueduct is completed the water supplied hereunder will be water furnished to the Agency by

Solano County Flood Control and Water Conservation District in the terminal reservoir of the Putah South Canal of the Solano Project. Thereafter all water supplied hereunder shall be project water pumped from the Delta.

5. Point of delivery: Water made available for delivery to American Canyon hereunder shall be delivered to American Canyon by the State at the delivery structure on the North Bay Aqueduct within the County of Napa that is most convenient to the District.

This applies  
only one  
delivery  
point

6. Time and rate of delivery:

(a) The year of initial water delivery shall be the year in which the State completes the construction of the Napa portion of the North Bay Aqueduct, but not earlier than 1968. The Agency shall make all reasonable efforts to assure that a continuous supply of water is made available for delivery to American Canyon from and after the year of initial water delivery.

(b) The Agency shall not be obligated to deliver water to American Canyon at an instantaneous rate of flow in excess of 9.5 cubic feet per second.

(c) The parties recognize that the Agency's ability to meet the American Canyon's peak delivery requirements is limited by (1) the delivery capacity of the North Bay Aqueduct, (2) the provisions of the State contract, and (3) the requirements of its other member units. Within these limitations the Agency will make all reasonable efforts to meet the peak delivery requirements of American Canyon and its other member units. If the Agency is unable to do so it shall not be obligated to deliver to American Canyon in any calendar month more

than that portion of 11% of the Agency's entitlement for such year as American Canyon's entitlement for such year bears to the total of all member units' entitlements for such year.

(d) The amounts, rates and times of delivery of project water to American Canyon hereunder shall be established in the same manner as is provided for the Agency in Article 12(a) of the State contract except that American Canyon shall deliver a preliminary water delivery schedule to the Agency on or before September 1 of each year, and except that in applying the provisions of said Article 12(a) of the State contract to this contract the undertakings of the State therein shall be deemed to be the undertakings of the Agency and the undertakings of the Agency therein shall be deemed to be the undertakings of American Canyon. ←

7. Measurement of water delivered: Project water delivered to American Canyon hereunder shall be measured by the State or, if the State fails to do so, by the Agency, in accordance with Article 11 of the State contract.

8. Non-responsibility of the Agency:

(a) The Agency makes no warranty as to the quality of water to be delivered hereunder. The Agency will use its best efforts to assure that such water will be of the best quality deliverable under the circumstances from time to time prevailing.

(b) Neither the Agency, nor any of its officers, agents or employees, shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to American Canyon under this contract caused by drought,



operation of area of origin statutes, or any other cause beyond the control of the Agency.

(c) The Agency reserves the right, in the event that at any time the quantity of water available to the Agency in the North Bay Aqueduct is less than the aggregate of the entitlements of all member units, to allocate the quantity of water available to the Agency among its member units in such manner as the Agency shall determine to be equitable, taking into consideration the availability of other water supplies and the needs of each member unit respectively, provided, however, that any shortage continuing for more than twenty-one (21) days shall be allocated by the Agency among its member units in proportion to their respective maximum annual entitlements; and provided further, however, that if all member units agree on a different method of allocating shortages, then the Agency shall allocate such shortages in accordance with such agreement.

(d) Neither the Agency nor any of its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal or distribution of water delivered hereunder, nor for any damage or claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the same.

9. Responsibility of American Canyon: Subject to the provisions of this contract, American Canyon shall be solely responsible for the control, carriage, handling, use, disposal and distribution of water supplied to American Canyon hereunder after it has passed

the delivery structure referred to in Section 5 hereof. American Canyon shall indemnify and hold harmless the State and the Agency and their respective officers, agents and employees from damage or claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond said delivery structure.

10. Applicability of State and Federal Contracts:

(a) This contract and all the rights and obligations of the parties hereto are, and shall be, subject to all the applicable terms, conditions and limitations contained in the State contract. Receipt of a copy of the State contract is hereby acknowledged by American Canyon.

(b) During the period when water made available for delivery hereunder is furnished by Solano County Flood Control and Water Conservation District from the Putah South Canal of the Solano Project, this agreement shall be subject to all the applicable terms, limitations and conditions contained in the water supply contract between the Agency, Solano County Flood Control and Water Conservation District, and the State of California dated . American Canyon hereby acknowledges receipt of a copy of said contract. ←

11. Payments by American Canyon:

(a) On or before October 1 of each year, commencing with the year preceding the year of initial water delivery, the Agency. shall establish and announce the charge to be paid by American Canyon for the water supply to be made available for delivery to ←

American Canyon hereunder during the following year. ← *Calc. made by the State Engineer*

(b) The charge shall be sufficient to return to the Agency over such reasonable period of time as shall be determined by the Agency the total of, but not more than, the amount of money disbursed by the Agency to provide water service to American Canyon hereunder, together with interest at the Project interest rate, computed in the same manner as under the State contract, on such disbursements from the time the same are made until the time the same are paid by American Canyon. The charges consist in the total of the following components:

(1) American Canyon's share of the transportation capital costs paid by the Agency to the State which share shall be in the proportion that American Canyon's maximum annual entitlement bears to the Agency's maximum annual entitlement as each may be hereafter modified, together with interest at the Project interest rate on any installments thereof prepaid by the Agency.

(2) The costs paid by the Agency for facilities, delivery structures and measuring devices constructed solely for the purpose of effecting delivery of water from the North Bay Aqueduct to American Canyon. If any of such facilities are used by another member unit, or units, the costs thereof shall be allocated between American Canyon and such other member unit or units on the basis of their respective proportionate use thereof.

*this cost  
needs to  
be determined*

(3) The cost to the Agency of the water furnished

each year to American Canyon, including the price paid therefor to Solano County Flood Control and Water Conservation District, or to the State as the Delta Charge, as the case may be, and including the operation, maintenance, power and replacement component of the Transportation Charge.

(4) Any minimum charges as determined by American Canyon's annual entitlements set forth in Table A hereof which are paid by the Agency to the State or to Solano County Flood Control and Water Conservation District.

(5) Any surcharge paid by the Agency to the State by reason of the use on excess lands of water delivered to American Canyon hereunder.

(6) Any interest or penalty paid by the Agency by reason of late payment by American Canyon of charges due hereunder.

(c) The charge shall be paid by American Canyon to the Agency in semi-monthly installments, not necessarily equal, and not later than fifteen (15) days after receipt of the Agency's invoices therefor. The Agency's invoices shall be in such amounts that the Agency shall receive from American Canyon and other member units funds to pay the Agency's current obligations hereinabove set forth to the State and to Solano County Flood Control and Water Conservation District not sooner than thirty (30) days prior to the date the same become due ~~to the State~~, except that American Canyon's share of costs payable by the Agency prior to the year 1980 shall be paid by American Canyon to the Agency in installments over the period of time from the year of initial water delivery to the year 1980.

repayment schedule  
needs to be  
worked out

(d) If, by agreement of the parties, American Canyon's maximum entitlement is hereafter increased, American Canyon shall, over such reasonable period of time as shall be <sup>mutually</sup> agreed upon, pay retroactively the additional transportation capital cost allocable to such increase together with interest thereon at the Project interest rate.

(e) If, by agreement of the parties, American Canyon's maximum entitlement is hereafter decreased, the Agency shall, if, as and when the transportation capital cost and interest allocable to such decrease is paid for by another member unit, refund to American Canyon the transportation capital cost and interest allocated to such decrease theretofore paid by American Canyon.

(f) The Agency will by written agreements impose upon each of its member units a charge for all water furnished through the North Bay Aqueduct which charge shall be determined, invoiced and paid in the manner set forth in this Section 11.

12. Area of use:

(a) The service area of American Canyon is that portion of Napa County shown on the map attached hereto entitled "Service Area of American Canyon", and hereby incorporated herein.

(b) So far as it is reasonably able to do so American Canyon will supply water throughout its service area. If American Canyon is unable or unwilling to serve water on reasonable terms, conditions and rates to any part of its service area and another member unit is able and willing to serve project water thereto on reasonable terms, conditions and rates, then such part shall be

American Canyon

withdrawn from American Canyon's service area. For the purpose of this subsection (b), a condition imposed by American Canyon that water service will not be furnished to land unless such land is annexed to American Canyon shall not, by itself, be deemed to be an unreasonable condition. The foregoing shall not be construed as an endorsement by the Agency of such condition, but is regarded as a matter to be determined by American Canyon.

(c) The Agency will not supply project water to any entity other than American Canyon for use within any portion of American Canyon's service area.

(d) American Canyon will not, without the prior written consent of all other member units affected thereby, distribute water within any of the following areas outside American Canyon's service area:

(1) Any area within the service area of another member unit.

(2) Any area wherein another member unit acquires all the water distribution facilities of American Canyon.

Nothing in this contract, however, shall prevent American Canyon from distributing water within the service area of the Napa Junction water system which American Canyon is proposing to acquire from California-Pacific Utilities Company, from the time American Canyon acquires the system throughout the time it continues to own such system.

(e) As used in this Section 12 the words "water distribution facilities" include only the facilities used to serve the

area in question and not through transmission lines or facilities used to serve other areas.

13. Validation: Within six (6) months after the effective date of this contract, American Canyon shall submit this contract to a court of competent jurisdiction for determination of its validity by a proceeding in mandamus or other appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment. In the event that this contract is determined to be invalid by such final decree or judgment American Canyon and the Agency shall make all reasonable efforts to obtain validating legislation at the next session of the Legislature empowered to consider such legislation, and within six (6) months after the close of such session, if such legislation shall have been enacted, American Canyon shall submit this contract to a court of competent jurisdiction for redetermination of its validity by appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment.

14. Miscellaneous provisions:

(a) Articles 31 and 44 of the State contract, changed with the word "Agency" substituted wherever the word "State" appears therein and the words "American Canyon" substituted wherever the word "Agency" appears therein, are hereby incorporated herein as though set forth in full at this point and the same shall apply to, and bind and benefit the parties hereto.

(b) The Agency shall not offer any quantity of project water for municipal or industrial purposes for sale or delivery to

anyone at a lesser cost than provided herein, unless and until it shall have offered American Canyon a reasonable opportunity to contract for an equal amount of water on the same terms and conditions.

(c) Contracts executed by the Agency with its other member units for a water supply from the North Bay Aqueduct shall be substantially in the form of this contract with respect to basic terms and conditions, including, without limiting the generality of the foregoing, the requirement that all member units other than American Canyon pay in charges all costs paid by the Agency for facilities, delivery structures and measuring devices constructed solely for the purpose of effecting delivery of water from the North Bay Aqueduct to member units other than American Canyon. The purpose of this provision is to assure each member unit that it will not be prejudiced by the Agency's agreements with other member units. This subsection (c) shall be liberally construed to accomplish this purpose and to achieve the maximum beneficial use of project water. The total entitlements of all member units for any year shall not exceed the total entitlements of the Agency under the State Contract and the Contract referred to in Section 10(b).

15. Conditions Precedent

(a) This contract shall take effect only if and when American Canyon has acquired that portion of the California-Pacific Utilities Company Napa Junction Water System lying south of the intersection of Jamieson Canyon Road and Napa-Vallejo Highway; has successfully sold and issued revenue bonds necessary to finance said

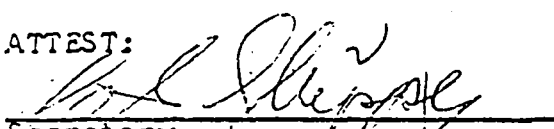


acquisition; and has obtained a loan under the State of California Davis-Grunsky Act or any other financing necessary to the construction of facilities (including pipelines, reservoirs and treatment plants) necessary to utilize project water.

(b) If prior to the 31st day of December 1967, American Canyon has not notified the Agency that the conditions set forth in subsection (a) of this Section 15 have happened or may be deleted from this agreement by reason of the fact they are not necessary to American Canyon's providing water service to the lands and inhabitants of its district, then this contract shall be rescinded and be of no further force or effect and neither party shall be under obligation to the other by reason of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract by their respective officers thereunto duly authorized on the date first above written.

ATTEST:

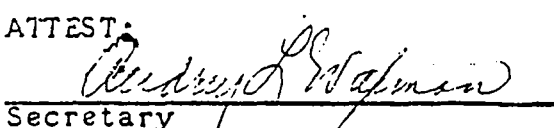
  
Secretary  
(Seal)

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

By

  
Chairman

ATTEST:

  
Secretary  
(Seal)

AMERICAN CANYON COUNTY WATER  
DISTRICT

By

  
President

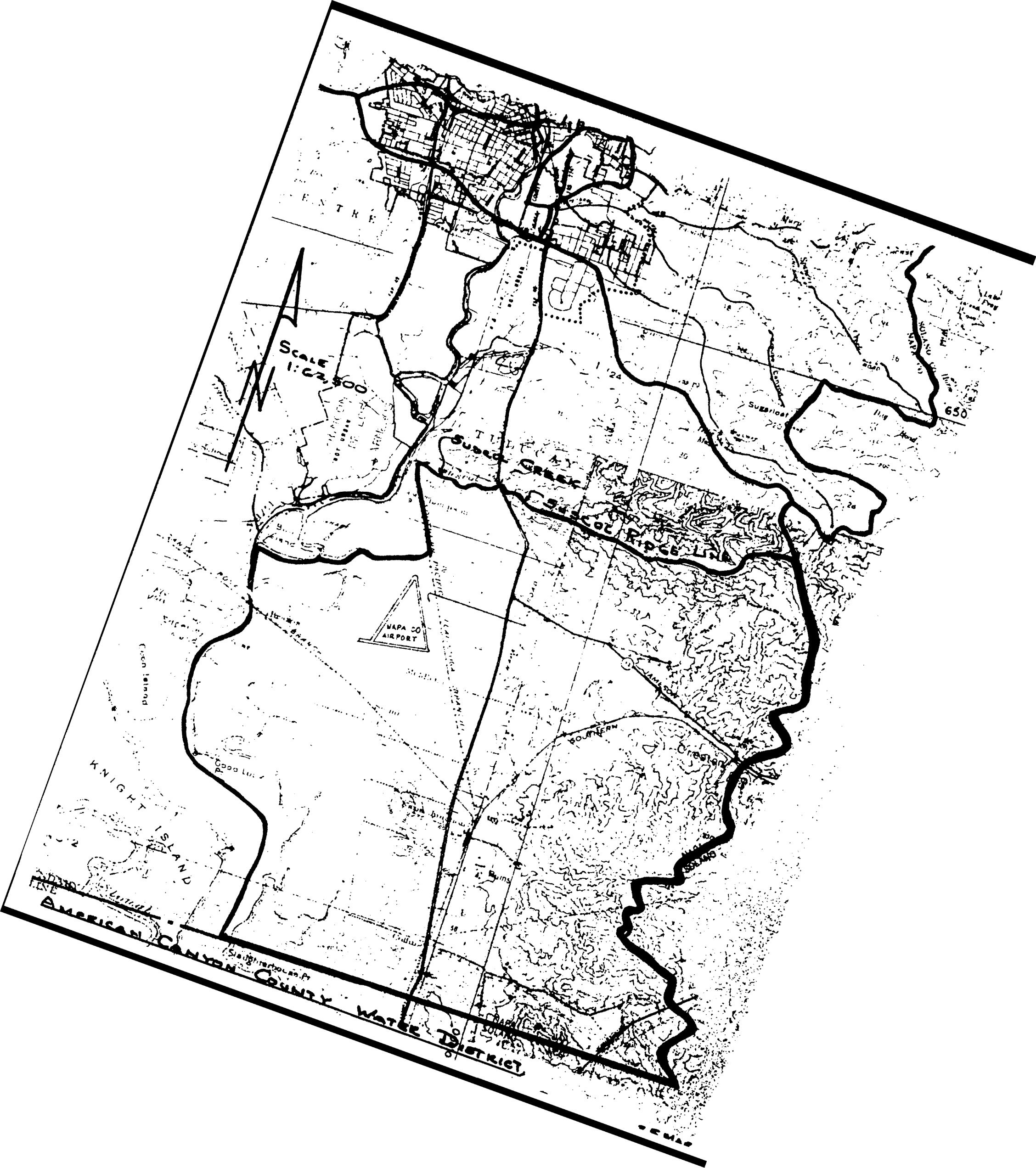
TABLE-A  
ANNUAL ENTITLEMENTS  
AMERICAN CANYON COUNTY WATER DISTRICT

<u>Year</u>	<u>Total Annual Amount in Acre-Feet</u>	
1* 68	500**	
2 68	600	1869
3 (1970)	750	1970
4	900	
5	1100	
6	1250	
7	1400	
8	1600	1975
9	1750	
10	1900	
11	2150	
12	2200	
13 1980	2400	1980
14	2600	
15 1982	2900	
16	3150	
17	3400	
18	3700	1985
19	3900	
20	4200	
21	4500	
22	4900	
23 (1990)	5200	1990

And each succeeding year thereafter for the term of this contract as a maximum annual entitlement 5200

\* Anticipated to be 1968.

\*\* To be prorated for the period from the date of initial availability of water from the Napa portion of the North Bay Aqueduct to the end of the year.





AGREEMENT NO. 423

AMENDMENT NO. 1

Filed

JUN 24 1975

FLORENCE W. CUNNY

TO  
CONTRACT FOR WATER SUPPLY FROM NORTH BAY AQUEDUCT  
BETWEEN  
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AND  
AMERICAN CANYON COUNTY WATER DISTRICT

By Cyril Del Zomp  
Clark of the Board

THIS AMENDATORY CONTRACT made and entered into this 24th

day of June, 1975, by and between NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a public agency of the State of California created and existing under and by virtue of Chapter 1449 of the 1951 Statutes of California, as amended, hereinafter referred to as "the Agency", and AMERICAN CANYON COUNTY WATER DISTRICT, a public body of the State of California hereinafter referred to as "American Canyon",

WITNESSETH:

The parties hereto agree as follows:

1. Subsection C of Section 11 of the contract between the parties for a water supply from the North Bay Aqueduct dated November 15, 1966 is hereby amended, effective July 1, 1975, to read:

(c) The charge for the water supply delivered or made available for delivery hereunder after June 30, 1975, shall be paid by American Canyon to the Agency in semi-monthly installments, not necessarily equal, and not later than 15 days after receipt of the Agency's invoices therefor. The Agency's invoices shall be in such amounts that the Agency shall receive from American Canyon and other member units funds to pay the Agency's current obligations, hereinabove

set forth, to the State and to Solano County Flood Control and Water Conservation District not sooner than thirty (30) days prior to the date the same become due.

Not later than September 30, 1975, the Agency will compute and notify American Canyon of the unpaid balance of the charges for the water supply delivered or made available for delivery hereunder from the inception of this contract through June 30, 1975, and the unpaid interest thereon through June 30, 1975, at the current project interest rate of 4.459% per annum.

American Canyon shall pay said unpaid balance, together with interest on the portions thereof from time to time unpaid at the then current project interest rate, in ten annual installments, beginning on July 1, 1976, and on July 1 of each year thereafter through July 1, 1985.

The amount of the installment to be paid on July 1, 1976, shall be equal to  $.1207404 (P + I)$ , where P is the unpaid balance of the charges for water supply delivered or made available for delivery hereunder through June 30, 1975, and I is the interest on the balance of said charges from time to time unpaid at the rate of 4.459% per annum from June 24, 1974 through June 30, 1976.

The amount of each subsequent installment shall be equal to

$$\frac{i (1 + i)^n}{(1 + i)^n - 1} \times P$$

where i is the project interest rate made effective on March 31 preceding the date the installment is payable, n is 10 minus the number of annual installments previously paid, and P is the principal amount of said charges then unpaid

2. The parties acknowledge that Section 15 of the contract

dated November 15, 1966, is no longer applicable, accordingly  
Section 15 is hereby deleted from the contract.

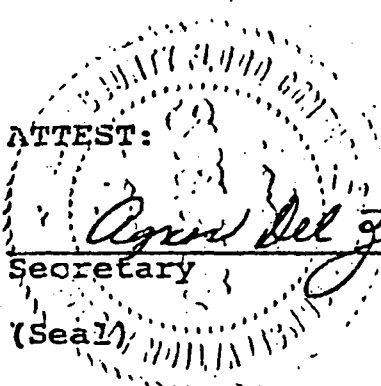
3. The parties acknowledge that year "1" on Table A is 1968.

4. Except as expressly set forth above, the contract dated  
November 15, 1966, is ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have executed this  
contract by their respective officers thereunto duly authorized  
on the date first above written.

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

ATTEST:

  
Agnes Del Zompo  
Secretary  
(Seal)

By

[Signature]  
Chairman

AMERICAN CANYON COUNTY WATER DISTRICT

ATTEST:

R. Anne Holmes  
Secretary  
(Seal)

By

Ralph D. Lepore  
President

NO. 423

AMENDMENT NO. 2 TO WATER SUPPLY CONTRACT  
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AND THE AMERICAN CANYON COUNTY WATER DISTRICT

THIS CONTRACTUAL AMENDMENT made this 21st day of  
December 1982, between the Napa County Flood Control and  
Water Conservation District, herein referred to as the "Agency", and  
the American Canyon County Water District a public body within the  
State of California, herein referred to as "American Canyon",

WHEREAS, the Agency and American Canyon have entered into  
a water supply contract dated November 15, 1966, providing that the  
Agency will supply certain quantities of water to American Canyon,  
and providing that American Canyon shall make certain payments to the  
Agency and setting forth the terms and conditions of such supply and  
such payment, and

WHEREAS, the Agency and American Canyon desire to make certain  
changes and additions to such contract, while otherwise continuing  
the contract in full force and effect, and

WHEREAS, the Agency and American Canyon recognize the need  
to conserve water by preventing its waste and furthering its  
efficient use, and

WHEREAS, comprehensive programs of conserving water by  
all the State's water contractors will enhance the adequacy,  
quality and dependability of the water supplies from the State  
Water Project and will lower costs, save energy and reduce inflow  
to sewage treatment facilities.

NOW, THEREFORE, it is mutually agreed that the following  
changes and additions are hereby made to the Water Supply Contract

ENDORSED  
Filed DEC 21 1982  
FLORENCE W. CUNNY  
BY KAREN ROBINSON  
Deputy Clerk



dated November 15, 1966 between the Agency and American Canyon.

1. Paragraph 7 is added to subdivision (b) of Article 11 of contract to read:

Any costs incurred by the agency in the administration of its State Contract supply contracts or in administering water deliveries to the member units. (These costs shall be apportioned among all members units directly proportional to their annual entitlements for each year and shall be determined and billed on a monthly basis by the Agency. The total monthly amount to be apportioned by the District shall not exceed \$2,000 during calendar year 1982. This monthly maximum will be adjusted in subsequent years by the published annual Consumer Price Index for the Bay Area.) This paragraph will not become effective until all member units have entered into contract amendments containing this commitment.

2. Subdivision (d) of Article 14 of the contract is added to read as follows:

(d) 1. For purposes of this contract a Water Conservation Plan, hereinafter referred to as plan, is defined as a comprehensive program to encourage more efficient use of current water supplies through reduction of water demand. Conservation measures include public education measures, distribution of water conservation kits and provisions for auditing water use. Reasonable conservation measures are those which are physically possible, cost effective, financially feasible, environmentally acceptable and legally implementable.

2. American Canyon agrees to begin to implement a water

conservation plan not later than the date of initial delivery of the State Project Water. The plan is to be designed to meet a water conservation goal of 110 acre-feet in the year 1990, 150 acre-feet in the year 2000, and 160 acre-feet in the year 2010. American Canyon shall implement through the plan all reasonable measures to meet such goals which are consistent with sound fiscal policies and proper operating procedures. If actual practice or new information shows the goals to be unachievable, the goals may be changed by mutual agreement of the parties. Failure to achieve the goals will not constitute a violation of this agreement since both parties agree that it is difficult, if not impossible, to measure specific water savings due to each particular measure. However, failure to implement an adequate plan of conservation designed to meet these goals will constitute a breach of this agreement.

3. The Agency will not reduce delivery of water for failure to implement a conservation plan or to achieve conservation goals.

4. American Canyon shall submit to the Agency a report describing the measures carried out under the plan. Such a report shall be submitted annually for the first five years of the plan and every fifth year thereafter. Records and documents shall be maintained which show what is being done to implement the plan and what quantities of water are conserved.

5. Upon determination by the State that Agency and its member-units have formulated an adequate program and are taking reasonable measures consistent with sound fiscal policies and proper operating procedures to implement it, the State shall, provide financial assistance in the form of grants and allowances

to Agency to cover expenses incurred by Agency and its member-units in connection with the program as follows:

a. To the extent it has authority to do so the State Department of Water Resources will make grants from available funds other than those appropriated by the California Water Resources Bond Act, to Agency for its member units to fund conservation measures such as leak detection programs and distribution of residential water conservation kits. Agency will assist American Canyon in applying for such funds.

b. To the extent that the cost of the program exceeds the amount of grants under paragraph (a) above, the State Department of Water Resources will, on application of Agency, make payments of funds available for construction of the State Water Resources Development System, to Agency for program expenditures the State has approved in advance such as the costs of initial development or purchase of movies and slide shows, initial water audit, initial leak detection and leak repairs, design of a corrosion control program, design of a meter maintenance schedule, purchase and distribution of residential water conservation kits, purchase of meters for loan to large quantity water users, and engaging consultants for any of the foregoing. Costs of other programs or equipment may be included upon approval by the Agency. Agency will make such funds available to American Canyon subsequent to the processing of a successful application with the State. Funds shall be provided within 60 days after receipt of statements of costs submitted not more frequently than monthly. The amount thus provided during each year together with interest thereon at the project interest rate established in the Water Supply Contract between the Agency and American Canyon, shall be repaid in not more than

twenty equal annual installments.

3.. Table A attached to the contract is hereby deleted and is replaced by the following Table A Amended:

TABLE A

1983	1400	1995	3200	2007	4800
1984	1500	1996	3400	2008	4850
1985	1600	1997	3600	2009	4900
1986	1700	1998	3800	2010	4950
1987	1800	1999	4000	2011	5000
1988	1900	2000	4200	2012	5050
1989	2000	2001	4300	2013	5100
1990	2200	2002	4400	2014	5150
1991	2400	2003	4500	2015	5200 and each
1992	2600	2004	4600		succeeding year there-
1993	2800	2005	4700		after for the term of
1994	3000	2006	4750		this contract as a max-
					imum entitlement.

IN WITNESS WHEREOF, the parties hereto have executed this contract amendment on the date first above written.

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

BY

  
COUNTY COUNSEL

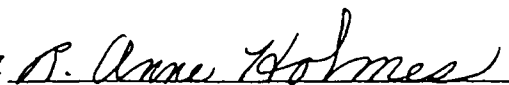
BY

  
HAROLD MOSKOWITZ

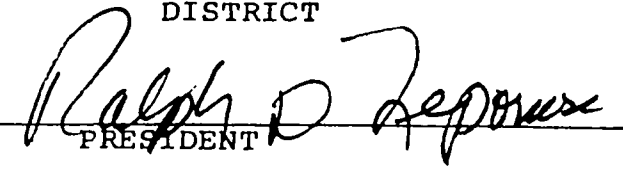
"ATTEST"

AMERICAN CANYON COUNTY WATER  
DISTRICT

BY

  
D. ANNE HOLMES  
SECRETARY

BY

  
RALPH D. ZEPHER  
PRESIDENT





**RESOLUTION NO. 93-38**

**AMENDMENT NO. 3  
TO WATER SUPPLY CONTRACT BETWEEN  
THE NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT  
AND THE CITY OF AMERICAN CANYON**

**WHEREAS**, the City of American Canyon, hereinafter referred to as "the City", and the Napa County Flood Control and Water Conservation District, hereinafter referred to as "the Agency", have entered into a water supply contract dated November 15, 1966, and amended as of June 24, 1975, and December 21, 1982, respecting the delivery of certain "project water" through the North Bay Aqueduct; and

**WHEREAS**, from time to time, the Agency is able to negotiate with third parties for the purchase of supplemental, non-project water to be delivered to the Agency by means of the North Bay Aqueduct; and

**WHEREAS**, the Agency often acts as a pass-through entity with respect to such supplemental water, providing it to cities or districts with the Agency (including American Canyon) on the terms and conditions for which it was acquired; and

**WHEREAS**, the parties desire to amend the Agreement to facilitate such supplemental water deliveries of non-project water in the future by providing for a purchase order procedure which does not require Napa County Flood Control and Water Conservation District Board of Supervisors approval.

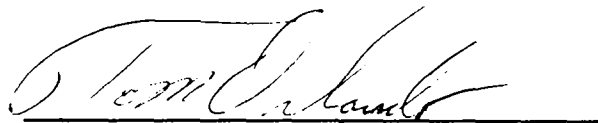
**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of American Canyon, California that Amendment No. 3 to Water Supply contract between the Napa County Flood Control and Water Conservation District and the City of American Canyon be approved and that the Mayor be authorized to execute the contract.

**APPROVED AND ADOPTED** at a regular meeting of the City Council of American Canyon held on the 16th day of September 1993, by the following vote:

**AYES:** Council member Anderson, Bennett, Whithers, Mayor Pro Tem Mahoney,  
Mayor Bittolo

**NOES:**

**ABSENT:**



**Tom Orlando  
Mayor**

**ATTEST:**



**Ronald L. Kiedrowski  
City Clerk**

**APPROVED AS TO FORM:**



**William D. Ross  
City Attorney**









**AMENDMENT NO. 4 TO NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT CONTRACT NO. 423**

**(WATER SUPPLY CONTRACT WITH CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 4 TO NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT CONTRACT NO. 423** ("Water Supply Contract") is made as of this 3<sup>RD</sup> day of DECEMBER, 1998, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, herein referred to as "Agency", and the CITY OF AMERICAN CANYON, herein referred to as "American Canyon";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement with the State of California that specifies the amount of water available to Agency for disbursement to its member units in any given year; and

**WHEREAS**, American Canyon is one of Agency's member units pursuant to the Water Supply Agreement entered into by Agency and American Canyon as of November 15, 1966, and subsequently amended on June 24, 1975, December 21, 1982 and April 6, 1993; and

**WHEREAS**, the City of Calistoga is one of Agency's member units pursuant to a separate water supply contract entered into by Agency and Calistoga as of June 15, 1982, and subsequently amended as of December 21, 1982; and

**WHEREAS**, American Canyon and the City of Calistoga have entered into an agreement to transfer 500 acre-feet of permanent water entitlement from American Canyon to Calistoga; and

**WHEREAS**, both cities have requested that Agency amend the respective entitlement build-up schedules, known as Table A, which are part of each city's water supply contract with Agency; and

**WHEREAS**, on behalf of its member units Agency has requested a corresponding change in Agency's water supply agreement with the State of California in order to provide for the changes requested by Agency's member units in their respective water supply contracts; and

**WHEREAS**, the State of California has submitted and Agency has approved an amendment to Agency's water supply agreement that would accommodate said Table A changes;

## TERMS

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and American Canyon that the Water Supply Contract shall be amended as follows:

1. Table A is hereby deleted and replaced by that Table A dated December, 1998, attached hereto and incorporated by reference herein.
2. Paragraph 11(e) is waived.
3. This Amendment No. 4 shall be effective on the date first above written; except that if Agency and the City of Calistoga execute an amendment to Napa County Flood Control and Water Conservation District Agreement No. 1926 to increase that city's entitlements sufficiently to permit the decrease in American Canyon's entitlements contemplated by the amendment to Table A on a date later than the date first above written, then this Amendment No. 4 shall be effective as of the date of execution of such amendment to Agreement No. 1926.
4. Except as provided in (1) through (3), above, all of the terms and provisions of the Water Supply Contract shall remain in full force and effect as previously approved and amended.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No.4 to Napa County Flood Control and Water Conservation District Contract No. 423 as

of the date first above written.

NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT

By

Mike Rippey  
MIKE RIPPEY, Chairman of the Board

"Agency"

ATTEST: MARY JEAN MCLAUGHLIN,  
Secretary/Clerk of the District

By

Leri Sisson, Deputy

CITY OF AMERICAN CANYON

By

Benj Anderson  
, Mayor of the  
City of American Canyon

"American Canyon"

ATTEST: MARK JOSEPH,  
City Clerk/City Manager of the  
City of American Canyon

By

Mark Joseph

APPROVED AS TO FORM: ROBERT  
WESTMEYER, District Legal Counsel

By Margaret Westmeyer, Chief Deputy

APPROVED AS TO FORM: WILLIAM  
ROSS, City Attorney for the City of  
American Canyon

By

William D. Ross

RECEIVED DEC 15 1998  
NAPA COUNTY FLOOD CONTROL DISTRICT  
OFFICE OF NAPA

MARY JEAN MCLAUGHLIN  
CLERK OF THE BOARD

BY

M Price Deputy

**TABLE A: ANNUAL ENTITLEMENT****CITY OF AMERICAN CANYON  
DECEMBER 1998**

<b>YEAR</b>	<b>TOTAL ANNUAL AMOUNT IN ACRE FEET</b>
1983	1,400
1984	1,500
1985	1,600
1986	1,700
1987	1,800
1988	1,900
1989	2,000
1990	2,200
1991	2,400
1992	2,600
1993	2,800
1994	3,000
1995	3,200
1996	3,400
1997	3,600
1998	3,800
1999	3,500
2000	3,700
2001	3,800
2002	3,900
2003	4,000
2004	4,100
2005	4,200
2006	4,250
2007	4,300
2008	4,350
2009	4,400
2010	4,450
2011	4,500
2012	4,550
2013	4,600
2014	4,650
2015	4,700*
2016	*
2017	*
2018	*
2019	*
2020	*
2021	*

\* AND EACH SUCCEEDING YEAR THEREAFTER FOR THE TERM OF THE CONTRACT AS A MAXIMUM ENTITLEMENT







**AMENDMENT NO. 5 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 5 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423** is made as of this 21st day of September 2000, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City" or "American Canyon";

**RECITALS**

**WHEREAS**, the State of California acting by and through the Department of Water Resources ("DWR"), hereinafter referred to collectively as "State", and Agency have entered into, under date of December 19, 1963, as subsequently amended, a water supply contract hereinafter referred to as "State Contract", to deliver water through the North Bay Aqueduct; and

**WHEREAS**, Agency is party to this water supply agreement that specifies the amount of water available to Agency for disbursement to its Member Units in any given year and the component charges for water allocated and delivered; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into Napa County Flood Control and Water Conservation District Agreement No. 423 as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, Amendment No. 2 as of December 21, 1982, Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 on of December 15, 1998, (said resale agreement as last amended being referred to hereinafter as the "Agreement") for the disbursement by Agency to City, as a Member Unit, of a portion of the water (hereinafter referred to as "North Bay Aqueduct water", or "NBA water") allocated to Agency under the State Contract; and

**WHEREAS**, regarding the acquisition of water from the Kern County Water Agency, hereinafter referred to as "KCWA":

1. State and Agency have further amended the State Contract by Amendment No. 18 to the State Contract;
2. One of the provisions of Amendment No. 18 makes available to urban State Water Project Contractors, such as the Agency, 130,000 acre-feet of State Water Project entitlement from agricultural State Water Project contractors under terms specified in the amended State Contract;
3. The City of American Canyon, the City of Napa, the Town of Yountville, the City of Calistoga, as current Member Units, and the City of St Helena, as a proposed

new Member Unit (hereinafter referred to collectively as "Member Units") have each requested the Agency to acquire on their behalf a total of 4,025 acre-feet of State Water Project entitlement from the agricultural State Water Project contractors to be divided among the Member Units;

4. In response to such requests, Agency and the Kern County Water Agency (hereinafter referred to as "KCWA"), an agricultural State Water Project contractor, have entered into an Agreement for Permanent Transfer of Entitlement to State Water Project Water and Capacity in the California Aqueduct ("Transfer Agreement") for the purchase of 4,025 acre-feet of State Water Project entitlement;

5. Agency and State intend to execute Amendment No. 21 to the State Contract to amend Agency's Table A to show the increase in State Water Project entitlement resulting from the Transfer Agreement.

6. Agency is prepared to execute the purchase and sale agreement with KCWA; and

7. Agency needs the commitment of City for current and future reimbursement for all costs incurred as a result of the KCWA purchase in proportion to the amount of KCWA water purchased by City in relation to the other Member Units; and,

**WHEREAS**, regarding reimbursement of Agency for administrative costs, and refunds of Make Whole payment proceeds:

1. Pursuant to the Agreement, Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Contract but also for Agency's expenses incurred in the administration and management of this Agreement with City;

2. Agency is also party to Napa County Flood Control and Water Conservation District Agreement No. 2325 (FC), a contract with the Solano County Water Agency (SCWA) dated August 27, 1985 which requires SCWA to reimburse Agency for extra costs incurred by Agency (hereinafter referred to as the "Make Whole payment") in consequence of a realignment in the water delivery infrastructure which was requested by and was more favorable to SCWA's Member Units than the original alignment which was more favorable to Agency's Member Units;

3. Because some of the extra costs incurred in consequence of the realignment are passed on to City and Agency's other Member Units, through the component charges for water allocated and delivered as calculated under the State Contract, City has requested that Agency also pass through to City City's proportionate share of the Make Whole payment when such payment is periodically received by Agency; and

4. The parties believe that it is in the best interests of Agency and City to amend the Agreement to not only provide a formal mechanism for pass-through of the Make-Whole payment to Agency Member Units such as City but also to clarify the manner in which City shall reimburse Agency under this Agreement for City's proportionate share of Agency's contract administration and management costs;

## TERMS

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Agreement shall be amended as follows:

1. The Agreement is hereby amended to add Addendum "A", attached hereto and incorporated by reference herein, relating to the resale by Agency to City of additional water purchased by Agency from KCWA. In connection with this additional water, in the event of any discrepancy between the provisions of this Agreement and the provisions of the Addendum, the latter shall prevail.
2. Subparagraph (7) of Paragraph (b) of Article 11 of the Agreement is amended to read in full as follows:

(7)

(i) **The following shall be in effect only from the effective date of Amendment No. 1 of the Agreement until the effective date of this Amendment No. 5 of the Agreement:**

Any costs incurred by the agency in the administration of its State contract supply contracts or in administering water deliveries to the member units. (These costs shall be apportioned among all members units directly proportional to their annual entitlements for each year and shall be determined and billed on a monthly basis by the Agency. The total monthly amount to be proportioned by the District shall not exceed \$2,000 during calendar year 1983. This monthly maximum will be adjusted in subsequent years by the published annual Consumer Price Index for the Bay Area.) This paragraph shall not become effective until July 1, 1983 and until all member units have entered into contract amendments containing this commitment.

(ii) **The foregoing shall be replaced by the following, prospectively only, as of the effective date of Amendment No. 5 of the Agreement:**

City shall pay Agency for the costs of administration and management of this Agreement as follows:

(A) **Level of Effort.** The parties acknowledge that each fiscal year Agency will incur certain minimum ongoing costs in the administration and management of the State Contract and the related resale contracts with the Member Units, including this Agreement. Such administration and management shall include, for example, contract administration, special studies, and activities required to monitor and keep the Member Units apprised regarding the State Water Project. City shall reimburse Agency for City's "proportionate share" of costs incurred by Agency in providing this minimum level

of effort. Except as otherwise provided in this Paragraph (7), City's proportionate share shall be calculated by multiplying the total cost by the ratio that City's ultimate entitlement of water under the State Contract bears to the total entitlement of water of Agency under the State Contract. This proportionate share is memorialized in Table C, attached hereto and incorporated herein by reference. For purposes of the foregoing calculation, the total cost for providing the minimum level of effort shall be the estimated total cost for maintenance and administration items relating to the NBA Water program established annually in the budget adopted by Agency's governing board, including any interim budget approved by the Agency Board pending adoption of the final budget. If Agency's actual appropriated and expended costs for administration and management in a fiscal year exceed the total cost established in Agency's budget for the minimum level of effort, including the amounts in an interim rollover budget pending adoption of the next year's budget, City shall also reimburse Agency for such additional actual costs in a total amount not to exceed 110% of the budgeted amount.

**(B) Reimbursement for Agency Projects.** City shall also reimburse Agency for City's proportionate share of the actual costs incurred by Agency in a given fiscal year in carrying out any projects requested by and benefiting City and one or more, of the other Member Units, with City's share calculated in proportion to its relative benefit from the project. The nature of each such project, identification of the parties benefited, the maximum cost, and the reimbursement ratios shall be set forth in separate commitments for such project entered into by and between Agency and City and/or the other Member Units benefited by such projects.

**(C) Billing Procedure.** Agency shall bill City monthly for reimbursement of City's proportionate share of the total cost for the level of effort as set forth in (A) and City's proportionate share of the actual costs incurred in the preceding month for Agency projects as set forth in (B). Agency shall endeavor to issue each monthly invoice prior to the 5th working day (weekends and Agency holidays excluded) of the month immediately following the month for which the expenses are incurred.

**(D) Payment Procedure/Late Charge.** Payment by City of each monthly invoice shall be made and received in Agency's administrative offices on or before the close of business on the due date shown on the invoice. The due date shown on the invoice shall not be less than 20 calendar days after the date of issuance of the invoice if the invoice is mailed, or not less than 18 calendar days after the date of issuance of the invoice if the invoice is hand delivered to City. If City fails, without reasonable cause, to make payment within the prescribed time, the costs so invoiced shall be increased by the

amount of a late penalty which shall be calculated on the unpaid balance at the rate earned by Agency's Treasurer for pooled funds invested.

3. Paragraph (c) of Article 11 is hereby amended to read in full as follows:

**(c) Timing of Payments and Distributions**

**(1) Payment by City Due Date.** The charge calculated in accordance with (b)(1) through (6), above, shall be paid by City, to Agency monthly, and received by Agency not later than Noon, five (5) working days prior to the date at which Agency would be assessed a late charge by State. If a late charge is assessed upon Agency by State, Agency shall issue an invoice, in accordance with Paragraph (7)(ii)(E) immediately above, for the full amount of the late charge assessment, to the Member Unit or Member Units responsible for the late charge assessment. Agency's invoices shall be in such amounts that Agency shall receive from City funds sufficient to pay City's proportionate share of Agency's current obligations under (b)(1) through (6), above, to the State.

**(2) Distribution by Agency of Make Whole Payment.** Upon receipt by Agency of the Make Whole payment from the Solano County Water Agency, Agency shall forward to City a proportion of the funds equivalent to the ratio of City's ultimate water entitlement under the State Contract to the total water entitlement for all Member Units administered by Agency under the State Contract, as it existed in calendar Year 1999, and as shown in Table D, attached hereto, and incorporated herein by reference. The forwarded funds shall be forwarded to City in the form of a check or warrant whose date of issuance shall be 15 working days or less of Agency's receipt of the Make Whole payment. Notwithstanding the foregoing, if at the time of receipt of the Make Whole payment by Agency, City has an unpaid balance for reimbursement of Agreement-related items, which have been billed and not paid by the due date, Agency may offset any such delinquent amounts against the amount of the Make Whole payment to which City would otherwise be entitled. If Agency has not issued the above-referenced check or warrant within the 15 day period, City may elect to offset such proportional amount against the amount of any Agreement-related invoice issued by Agency that is outstanding at the time.

4. Paragraph (d) is hereby added to Article 14 to read in full as follows:

**(d) Entirety of Contract.** Except when authorized expressly otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties relating to the subject of the Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

5. Agency and City acknowledge that it is the intent of the parties that the Member Units within the service area of Agency under the State Contract will also be amending

their respective water resale agreements, or in the case of St. Helena, will be entering into its water resale agreement, with Agency in substantially the same manner as set forth above. For this reason, Amendment No. 5 of the Agreement shall be effective as of the date the last of the Member Units has entered into such similar amendment or agreement, whichever is later.

6. All the rights and obligations of each of the parties hereto are and shall be subject to all the applicable terms, conditions and limitations in the State Contract and the Transfer Agreement. City hereby acknowledges receipt of a copy of the State Contract and all amendments thereto to date, which are respectively, numbered 1 through 20, except #19 which does not exist. City also acknowledges receipt of a copy of a draft of Amendment 21 to the State Contract.

7. Except as provided in 1 through 4, above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth in 5 above, in full force and effect as previously approved and last amended.

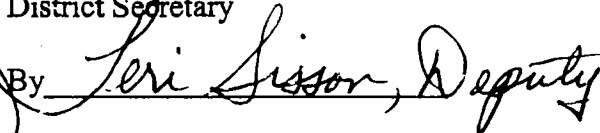
**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No.5 of Napa County Flood Control and Water Conservation District Agreement No. 423

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.5 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

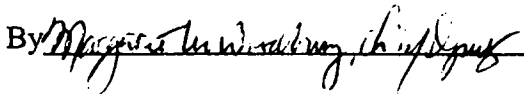
NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT

By   
ED HENDERSON, Chairman of the Board

ATTEST:  
MARY JEAN MCLAUGHLIN, "Agency"  
District Secretary

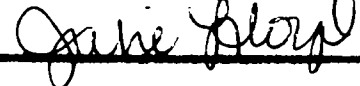
By , Deputy

APPROVED AS TO FORM: ROBERT  
WESTMEYER, District Legal Counsel


By 

APPROVED 9-21-00  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

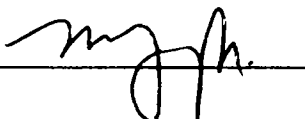
MARY JEAN MCLAUGHLIN  
SECRETARY OF THE DISTRICT

BY  Deputy

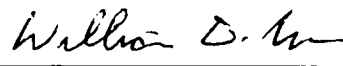
CITY OF AMERICAN CANYON

By   
LORI MAPLES, Mayor  
"City"

ATTEST:  
MARK JOSEPH, City Clerk

By 

APPROVED AS TO FORM:  
WILLIAM ROSS, City Attorney

By 

## **Table C**

### Allocation of Minimum Level of Effort

City	Acre Feet	Percentage share
American Canyon	5,200	17.92
Napa	19,800	68.22
Yountville	1,100	3.79
St Helena	1,000	3.44
Calistoga	1,925	6.63
Total	29,025	100.00



## **Table D**

### **Allocation of Make Whole Payment**

<b>City</b>	<b>Acre Feet</b>	<b>Percentage share</b>
American Canyon	4,700	18.80
Napa	18,800	75.20
Yountville	500	2.00
St Helena	0	0
Calistoga	1,000	4.00
Total	25,000	100.00

## **ADDENDUM "A"**

### **RESALE OF KERN COUNTY WATER AGENCY WATER SUPPLY ENTITLEMENT**

- A. Agency agrees to purchase water from KCWA through a Purchase & Sale Agreement (Transfer Agreement) for the benefit of City and in the amounts shown in Tables B, B-1, and B-2, attached hereto, and incorporated by reference herein. Agency shall make available for delivery to City the amounts of project water shown in the Tables. The amounts of project water shown in Table B-1 for each year are sometimes referred to in this Addendum as "the Member Unit's supplemental annual entitlements". Agency shall make delivery to the extent that project water is made available to Agency by DWR. In the case of a reduction in the amount of project water made available to Agency, Agency shall reduce the amount of Table B-1 project water to City in the same proportion as State reduces project water to Agency.
- B. City agrees to reimburse Agency for all costs of all purchases made by Agency on behalf of City under this Addendum. City's portion of the total purchase costs incurred by Agency shall be calculated in accordance with Table B.
- C. City agrees to pay Agency for the actual costs associated with scheduling and actual transport through the NBA of water purchased for City under this Addendum. Such costs shall be at the rates established by DWR. Payment shall be made monthly in arrears.
- D. The procedures for payment contained in the Agreement, as amended, shall apply to City's payments to Agency under this Addendum.
- E. This purchase is contingent upon all of the following first being satisfied:
  - i. Payment by City to Agency of the purchase amount.
  - ii. Approval of all CEQA documents associated with the purchase and sale.
  - iii. All other Member Units executing an agreement or amendment thereto similar to this Agreement, including this Addendum.
  - iv. Execution of the Transfer Agreement by both the governing Board of KCWA, and the governing Board of Agency
  - v. Execution of the corresponding agreement or amendment thereto between DWR and KCWA.
  - vi. Execution of the agreement or amendment thereto between DWR and Agency.

## **Table B**

(September 19, 2000)

### **Allocation of Water Purchase from the KCWA**

City	Acre Feet	Percentage share
American Canyon	500	12.42
Napa	1,000	24.84
Yountville	600	14.91
St Helena	1,000	24.84
Calistoga	925	22.98
Total	4,025	100.00

## **Table B-1**

### Allocation of Water Purchase from the KCWA

YEAR		TOTAL ANNUAL AMOUNT IN ACRE-FEET
1	1988	0
2	1989	0
3	1990	0
4	1991	0
5	1992	0
6	1993	0
7	1994	0
8	1995	0
9	1996	0
10	1997	0
11	1998	0
12	1999	0
13	2000	0
14	2001	300
15	2002	400
16	2003	500
And each succeeding year, thereafter for the term of this contract as a maximum annual entitlement:		500

## TABLE B-2

### COMBINED ANNUAL ENTITLEMENTS

(annual entitlement from Calendar 1999, plus KCWA purchase)

YEAR		TOTAL ANNUAL AMOUNT IN ACRE-FEET
1	1988	1,900
2	1989	2,000
3	1990	2,200
4	1991	2,400
5	1992	2,600
6	1993	2,800
7	1994	3,000
8	1995	3,200
9	1996	3,400
10	1997	3,600
11	1998	3,800
12	1999	3,500
13	2000	3,700
14	2001	4,100
15	2002	4,300
16	2003	4,500
17	2004	4,600
18	2005	4,700
19	2006	4,750
20	2007	4,800
21	2008	4,850
22	2009	4,900
23	2010	4,950
24	2011	5,000
25	2012	5,050
26	2013	5,100
27	2014	5,150
28	2015	5,200
And each succeeding year, thereafter for the term of this contract as a maximum annual entitlement:		5,200



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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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PLANNING AND CONSERVATION LEAGUE, a California not-for-profit corporation; PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California public agency; and CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC., a California not-for-profit corporation,

*Plaintiffs, Appellants and Cross-Respondents*

v.

DEPARTMENT OF WATER RESOURCES, a California state agency,

*Defendant, Respondent, and Cross-Appellant*

CENTRAL COAST WATER AUTHORITY, a joint powers agency,

*Defendant and Respondent*

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**PETITION FOR REVIEW**

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After Decision By The Court of Appeal for the  
Third Appellate District, Case No. C024576

BILL LOCKYER  
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RICHARD M. FRANK  
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Counsel for Defendant, Respondent

and Cross-Appellant Department of Water  
Resources



**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:**

Petitioner Department of Water Resources (DWR or Department) respectfully petitions for review of the decision of the Court of Appeal, Third Appellate District. A copy of the decision is attached as Appendix A, and the modification ordered on October 16, 2000 is attached as Appendix B.

**ISSUES PRESENTED**

1. Whether, in an action brought pursuant to the California Environmental Quality Act, the Court of Appeal exceeded its authority by independently weighing conflicting evidence in the record, and not deferring to the agency's legislative decision concerning likely future conditions, where the agency's decision was supported by substantial evidence in the record.

2. Whether a plaintiff asserting a "reverse validation" action under Code of Civil Procedure section 863 to challenge a contract between two public agencies is required to name and serve each of the agencies as defendants in the action.

**INTRODUCTION**

The State of California respectfully petitions this Court for review of the decision of the Court of Appeal, Third Appellate District, on a matter of critical importance to all Californians: the sustained reliability of the State's water supply. For nearly 40 years, the California State Water Project (SWP)<sup>1</sup> has endeavored to ensure reliable water supplies to Californians. Today, water from the SWP serves two-thirds of the population of the State, approximately 20 million people, and irrigates over 600,000 acres of the most highly productive farmland in the world.

Unless reversed, the appellate court decision will create enormous uncertainty for California's farmers and cities, and will undermine recent innovations in water delivery resulting from the "Monterey Amendments" to the Department's water supply contracts

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1. The State Water Project, as it is commonly known, is the project constructed pursuant to the California Water Resources Development Bond Act, also known as the Burns-Porter Act. (Wat. Code, § 12930 et seq.)

with the many public agencies that obtain water through the SWP.

Without the flexibility that the Monterey Amendments bring to water supply and delivery, California's leadership role in agricultural and technological production is threatened. Existing and future residents may face shortages that the Monterey Amendments could otherwise avoid, and the uncertainty in future water supply allocations will affect virtually all sectors of California's economy.

The statewide notoriety that met the Court of Appeal's decision by major newspapers is only one measure of its tremendous impact on the State's future water policy. Appellants and their supporters confirmed the decision's potential impact on state water policy, describing it as a "momentous decision" and a "a bombshell." Leavenworth, *State Water Policy Rebuked by Court*, The Sacramento Bee (Sept. 19, 2000) p. 1; Pfaff, "Bombshell" Ruling Targets Water Shortfall, S. F. Daily Journal (Sept. 19, 2000) p. 1.

At the inception of the SWP, this Court invoked its original jurisdiction to rule on a matter of vital significance to California: the validity of the long-term water supply contract for the SWP entered into between DWR and the Metropolitan Water District of Southern California, which was to be the prototype for all subsequent contracts. (*Metropolitan Water District of Southern California v. Marquardt* (1963) 59 Cal.2d 159.) In *Marquardt*, this Court comprehensively affirmed the validity of the contract, forming the basis for future development and financing of the SWP.

The Department respectfully requests this Court to turn its attention again to the SWP's long-term water supply contracts. Review is imperative to assure the continued reliability of the State's water supply, efficient and equitable use of available supplies, and consistency and continuity of future supply.

In the thirty-seven years since this Court validated the original SWP contract, California's economic, political, and environmental landscape has undergone vast changes. The vision Governor Edmund G. "Pat" Brown had for development of the State's water

resources remains unfulfilled. Over time, the public and policymakers have properly given increasingly close scrutiny to the environmental consequences of large projects such as the SWP. Balancing financial, environmental, and water supply needs has posed difficult challenges for DWR, particularly during the drought of the late 1980's and early 1990's. In those years, intense dissension among the SWP contractors arose, focusing on DWR's allocation of water, particularly the preference given to urban contractors in the initial annual allocations.

The resolution of these disputes brought forth the 1994 Monterey Agreement, a comprehensive set of changes to the long-term water supply contracts. The Monterey Agreement served as a midcourse correction to the SWP in an effort to meet the changing circumstances evolving in the second half of the 70-year contracts. It added flexibility to the water management rules so contractors could avail themselves of developing technologies such as groundwater banking, and brought additional options for water transfers and storage. The changes also afforded much-needed financial relief and aligned contract entitlements more closely with contractors' water needs. The Monterey Agreement was the vehicle to overcome the gridlock caused by

outdated contracts that no longer served the competing demands placed on the SWP.

In response to this consensus-based, creative approach to address the challenges in managing this valuable public resource, the Court of Appeal ruled that the environmental baseline for analyzing its potential impacts had to include a forecast of the future that assumed that the Department would exercise its discretion to invoke a previously unexercised provision in the contracts, Article 18(b) <sup>2</sup>. In fact, the record showed that it was unlikely that the Department would exercise this option in the foreseeable future. In doing so, the Court of Appeal exceeded its authority under the California Environmental

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2. The full text of Article 18(b) of the contracts is included in the Court of Appeal's typed decision. (Appendix A, p.6.)

Quality Act (CEQA)<sup>3</sup>, and second-guessed the evidence in the Environmental Impact Report (EIR) regarding how DWR would exercise its discretion in the administration of the SWP. The Court of Appeal's decision effectively supplants DWR's authority to determine whether and how to declare a permanent shortage under the water supply contracts, a decision that requires it to exercise its discretion in a complex weighing of many factors.

Aside from the important issues under CEQA, the Court of Appeal's decision presents novel and important procedural questions for the public agencies whose contracts are subject to the "reverse validation" Code of Civil Procedure of section 863.<sup>4</sup> First, when a plaintiff challenges a contract between two public agencies, must the plaintiff name and serve both of the contracting parties? Second, when a trial court rules in a binding adjudication that both agencies must be served, may the Court of Appeal later reject the trial court's final decision? These are issues of paramount importance to public agencies, which need to be able to rely on their contracts, and must be able to fully protect their rights when their contracts with other public agencies are challenged by court action.

The Department respectfully urges this Court to grant review of the Court of Appeal's decision and address these issues.

### **REASONS WHY REVIEW SHOULD BE GRANTED**

With all due respect, the Court of Appeal in this case went far beyond the permissible role of a reviewing court in a CEQA action. It substituted its judgment for that of the EIR's conclusions, weighed the evidence and reached its own conclusions rather than reviewing the agency's decision to determine whether it was supported by substantial evidence and resolving doubts in favor of the agency decision.

The decision also exponentially expands the information disclosure requirements under CEQA to a virtually unlimited range of possible impacts. Without this Court's review, State and local agencies throughout California will be left with a daunting task of

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3. Public Resources Code section 21000 et seq.

4. Unless otherwise noted, all subsequent references are to the Code of Civil Procedure.

accounting for all of the "possible effects" that this decision mandates be considered in an EIR. Agencies will be required to produce speculative predictions of future events whether or not substantial evidence exists to support the likelihood of any of them occurring.

In addition to the errors contained in its review of the agency decision under CEQA, the Court misconstrued the validation statutes in a way that allows an adjudication of a contracting public agency's rights under the contract without personal jurisdiction over that party. It is imperative that the uncertainty created by this decision be clarified by this Court so that public agencies whose actions are challenged under section 863, and third parties challenging a public agency's action, will know what is required to obtain effective jurisdiction in order to obtain a binding judgment over each contracting public agency. This Court needs to resolve the uncertainty posed by the Court of Appeal's decision and clarify what procedures must be followed to bring a valid action pursuant to section 863.

In addition to the importance of the foregoing legal issues, this case merits review because of the enormity of what is at stake: the decision threatens to unwind significant changes to the SWP operations that DWR and twenty-seven of the twenty-nine water agencies have agreed for the past five years are essential to the project. If this decision is not reversed, the tremendous operational flexibility brought by the Monterey Agreement could be a nullity, and the SWP's ability to face the increasing demands on its water supply system would be crippled. Thus, both because of the importance of the legal questions that need resolution by this Court, and because of the far-reaching effect of this erroneous decision, this Court should grant review.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

### **A. The State Water Project and the Monterey Agreement.**

The SWP is the one of the most extensive water supply systems in the world. Renowned for its engineering achievements, the SWP consists of 28 dams and reservoirs, including Oroville and San Luis Reservoirs, 26 pumping and generating plants, and approximately 660 miles of aqueducts. (Slip opn. p. 4-5.) Since the Burns-Porter Act (Act) was adopted by the voters of the State in 1960, the Act and the long-term water

supply contracts with 29 local public agencies have provided the institutional structure supporting the operation and financing of the SWP. (Wat. Code, § 12930 et seq.)

The contracts contain an elaborate system for allocation of water and costs among the contractors (AR 2951),<sup>5</sup> repayment of the bonds issued to finance the project. (Wat. Code, § 11455.) Under each contract, the public agency water contractor assumes responsibility to pay for a proportionate share of the cost of constructing, operating, and maintaining the SWP facilities (slip opn. p. 5) and DWR agrees to deliver a proportionate share of available water through those facilities annually based upon the water entitlement stated in Table A to the contract (Table A entitlement). (AR 2951.) As originally structured, each contractor's future demand for water was projected and incorporated into a demand buildup schedule to 1990 based on growth projections made in the 1960's when the contracts were executed. Altogether, the projected demand entitlements total 4.23 million acre feet (maf). (Slip opn. p. 28.)

Some contractors have never requested their full entitlement, as a result of lower-than-projected growth, water conservation measures, and use of other water sources. (Slip opn. pp. 29-30; Tables B-4 and B-5B, DWR Bulletin 132-93 (AR 2952).) Other contractors order their full Table A entitlements nearly every year. (*Ibid.*)

Prior to the Monterey Amendments, the contracts provided that in times of temporary shortage, deliveries to agricultural contractors would be reduced by up to 50 percent before any reductions to urban contractors were made. (Article 18(a).)<sup>6</sup> In the event of a permanent shortage in minimum project yield, the contract provided that all

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5. The administrative record used in the Superior Court will be referred to as "AR" and the Appellants' Appendix will be referred to as "AA" with roman numerals referencing the volumes of the Appellants' Appendix. The Reporter's Transcript is referred to as "RT".

6. A copy of the pre-Monterey Amendments contract is at AR 2951.

Table A entitlements would be reduced proportionately if certain criteria were met (Article 18(b).) If entitlements were reduced due to a permanent shortage, they could later be reinstated if additional supply capability was developed. (Article 18(d).)

The drought of the late 1980's and early 1990's and other factors resulted in temporary reductions in the SWP's ability to meet the contractors' requests. (DEIR p. 3-1; FEIR p. 35.)<sup>7</sup> Friction developed among the contractors about available supply and the correct implementation of the contract provisions on allocation. (Slip opn. p. 8.) After two years of normal deliveries, 1995 was forecast to bring shortages again. (DWR Bulletin 132-94 p. 29.) The December 1994 water allocation was expected to trigger litigation by the agricultural contractors because, based on Article 18(a) of the contracts, DWR would reduce agricultural water supplies by 50 percent before reducing urban water deliveries. (Slip opn. p. 8.)

In order to avert a major lawsuit and the accompanying period of uncertainty and conflict, DWR and the contractors began a series of negotiations (the last of which occurred in Monterey, California) that culminated in the Monterey Agreement. (Slip opn. p. 9.) From the initial single issue related to the method of allocating available water supply in times

of shortage, the discussions expanded to a wide-ranging examination of the water supply contracts. The Monterey Agreement provided for a number of changes in the contracts to facilitate more efficient uses of available supplies. (Slip. opn. 9.)

The Monterey Agreement changed the method for allocating available water supplies, which received substantial attention in the EIR. (DEIR pp. 3-1 to 3-19.) The initial agricultural shortage provision was removed, and the new provision provided that available supplies were to be allocated in proportion to the entitlements each contractor had in its Table A. (Slip opn. p. 20.) Article 18(b) was now largely superfluous because

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7. The Draft EIR will be referred to as the "DEIR" and the Final EIR will be referred to as the "FEIR." Both are part of the Administrative Record.

it would not in any event change the allocation among contractors even if it were invoked. Therefore, it was deleted. (FEIR, Response to Comments p.17.)

Thereafter, DWR and the contractors proceeded to convert the Monterey Agreement to contract amendment language and to prepare an EIR. (Slip opn. pp. 10-11.) Although a committee approach was taken to the substantive contents of the EIR (DEIR 8-1), the Central Coast Water Authority (CCWA) acted as lead agency under CEQA. (Slip opn. p. 11.) DWR approved the EIR as a responsible agency and made findings on environmental impacts before the contract amendments were executed. (Slip opn. pp.10-11.)

### **B. Procedural History.**

In December, 1995, the Planning and Conservation League (PCL) filed a complaint and petition for writ of mandate against DWR and CCWA alleging that CCWA wrongfully acted as lead agency and that the EIR was inadequate. (I AA pp. 1, 8-11.)

In February, 1996, PCL, now joined by Plumas County and Citizens Planning Association of Santa Barbara County, filed a first amended complaint. Plaintiffs added a cause of action for "reverse validation" against DWR under section 863, seeking a judgment invalidating the Monterey Amendments and the Kern Water Bank transfer on the ground DWR had executed them in violation of law. (I AA pp. 36-37.) On March 27, 1996, the court issued a "revised summons" addressed to all interested persons (IV AA pp. 813-814), and plaintiffs published it in a Sacramento legal newspaper. (IV AA p. 825.)

Twelve of the contractors appeared specially and moved to quash service of process. The trial court ruled that section 863 required plaintiffs to secure personal jurisdiction over all public agencies that were parties to the contracts plaintiffs sought to invalidate, but that plaintiffs had failed to do so. (V AA pp. 1179-1181.) Having so ruled, the court expressly declined to decide whether plaintiffs' service of the revised summons by publication had been proper. (May 17, 1996 RT p. 40.)



The court then granted summary adjudication for DWR and CCWA on plaintiffs' "reverse validation" cause of action, ruling that the contractors who had successfully moved to quash service were indispensable parties, and plaintiffs' failure to secure jurisdiction over them barred plaintiffs from proceeding on the "reverse validation" cause of action. (Slip opn. pp. 11, 42; V AA pp. 1152-1155.)

On the CEQA claim, the trial court ruled that CCWA should not have been designated as the lead agency (V AA p. 1169), but that the error was not prejudicial because the EIR was adequate as an informational document. (V AA pp. 1172-1175.)

The court specifically rejected plaintiffs' contention that the EIR's analysis of the no project alternative was deficient for failing to discuss the possibility that, if the Monterey Agreement were not implemented, DWR would enforce the permanent shortage provisions of Article 18(b) of the water supply contracts: "[Plaintiffs] have not shown that enforcement of Article 18(b) is foreseeable, or even likely, under any circumstances." (V AA p. 1174.)

Plaintiffs appealed from the judgment, both from the motion to quash and from the CEQA rulings, and unsuccessfully sought a writ of supersedeas enjoining the implementation of the amendments in the Court of Appeal. The Court of Appeal denied the writ on September 26, 1996. On November 27, 1996, the Kern County Water Agency moved to dismiss the appeal from the order granting the motions to quash as untimely, and on December 27, 1996, the Court of Appeal granted that motion. (Slip opn. p.12.) This Court affirmed the dismissal. (*Planning and Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 264.)

On the merits, the Court of Appeal reversed the judgment and ruled that: (1) DWR, not CCWA, should have been designated as the lead agency (slip opn. p. 19); (2) the EIR's discussion of the no project alternative was inadequate because it failed to discuss the possibility that, absent the project, DWR would declare a permanent shortage and invoke Article 18(b) (slip opn. p. 29); (3) notwithstanding the final judgment on the order quashing service of process on the specially appearing contractors, the Court of

Appeal could reach the question whether section 863 required plaintiffs to secure personal jurisdiction over the specially appearing contractors (slip opn. pp. 46-49); and (4) a contract between two public agencies may be challenged in a reverse validation action even if the plaintiff has failed to secure personal jurisdiction over both public agencies (slip opn. p. 45.)

## ARGUMENT

### I.

#### **THE COURT OF APPEAL ERRED IN WEIGHING THE EVIDENCE ITSELF, CONTRARY TO THIS COURT'S DIRECTION IN *LAUREL HEIGHTS*.**

##### **A. The Standard of Review for CEQA Decisions Is Whether the Agency Decision Is Supported by Substantial Evidence.**

One of the fundamental principles of judicial review under CEQA is that the substantial evidence test applies to review of an agency's decision. In reviewing an agency's determination, the court "shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record." (Pub. Resources Code, § 21168.)

As stated by this Court in its first *Laurel Heights* decision, under the substantial evidence standard of review:

[t]he court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document. [Citation.] . . . In applying the substantial evidence standard, "the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514). . . . A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. [Citation.] A court's task is not to weigh conflicting evidence and determine who has the better argument . . . . We have neither the resources nor the scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review

permitted us to do so.

(*Laurel Heights Improvement Assn. of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392-393; emphasis added.)

As discussed below, the Court of Appeal's decision does the exact opposite of this rule: it resolves reasonable doubts in favor of a different conclusion suggested by appellants, without relying on substantial evidence and without deferring to the legislative decision of the administrative agency on the conclusions in the EIR. (Slip opn. pp. 29, 33.)

The purpose of including a no project alternative in an EIR is to allow the decision makers and the public the opportunity to compare what would occur with and without approval of the project. "[A] project must be compared with its *pre-project* conditions in order, inter alia, to provide a uniform baseline for the measurement of its impact and to 'assess the advantage of terminating the proposal.' [Citation.]" (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1, 9 [pre-project conditions were the conditions prior to construction of a second aqueduct].) The no project alternative is defined as what the existing conditions are "as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." (Cal.Code Regs., tit. 14, § 15126.6(e)(2), formerly Cal.Code Regs., tit. 14, § 15126(d)(4).)

The 1998 amendments to the CEQA Guidelines regarding the no project alternative provisions make it clear that for a typical project involving land use development or a general plan amendment, the no project alternative consists of existing development proposals *currently under consideration* by the lead agency or other agencies. (Cal. Code Regs., tit. 14, §§ 15126.6(e)(3)(A) & (e)(3)(B).) There is no support in the CEQA Guidelines, either in the 1995 Guidelines or as subsequently amended, for requiring the no project alternative to assume an agency would take discretionary actions in the future where there is no development proposal planned or proposed.

In this case, the pre-project condition means leaving the language of the existing SWP contracts in place, including the unexercised discretionary action for addressing

permanent shortage provided in Article 18(b). This provision has never been invoked by the Department during the first 35 years of the 70-year contract. *Not exercising the option* of declaring a permanent shortage was a continuation of the existing baseline, i.e., what would happen if the project did not go forward. If the Monterey Amendments were not approved, the language of the existing contracts would remain in place.

The Court of Appeal declared the EIR's no project analysis insufficient. (Slip opn. pp. 28-29, 33, 35.) The Court found that the appellants' alternative theory of what would happen under a no project scenario was an "equally plausible construction," without explaining why the EIR's conclusions were not supported by substantial evidence. (Slip opn. p. 29.) The appropriate question *should* have been whether to examine the EIR substantial evidence to support its forecast of what the environmental conditions would be if the project were not approved, not whether there was "an opposite conclusion" which "would have been equally or more reasonable." (*Laurel Heights, supra*, 47 Cal.3d at 392-893, citing *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 401-402.)

The Court's view of what the baseline for comparison should be was based on its independent assessment that a permanent shortage in the minimum project yield of the SWP exists, and on the Court's own speculation that DWR would consequently be compelled to invoke Article 18(b), regardless of other relevant factors, and should therefore include this in its no project analysis. (Slip opn. pp.28, 29.) Although this issue was not adjudicated by the trial court, the Court of Appeal concluded, based on its own review of two DWR publications of which it took judicial notice (slip opn. p.4.), that "[t]here is then no question that the SWP cannot deliver all the water to which contractors are entitled under the original contracts. It does not appear that the SWP has ever had that ability. Nor do defendants suggest that full delivery of entitlement water is likely within the life of the contracts." (Slip opn. p. 28.) As a result of this single factual determination, the Court rejected the EIR's description and analysis of the no project

alternative. The Court's determination that the no project alternative should have considered the possibility that DWR might invoke Article 18(b) required the Court to make at least two factual assumptions: (1) the criteria in Article 18(b) were met, to wit, the SWP physically could not supply 4.2 maf of water annually; preventive and remedial measures had been taken; and those measures were unsuccessful; and (2) as a result, it was likely that DWR would exercise its discretion to invoke Article 18(b). (Slip opn. pp. 28, 29, 33.)

More importantly, the record did not contain any evidence, nor was there any briefing on what each of the criteria in Article 18(b) means in this factual and temporal context. In addition to the essential criteria listed in 18(b), the decision to invoke 18(b) would require consideration of many technically complex factors, such as: at what point in time the determination regarding a "permanent shortage" should be made; when it should take effect; what the new minimum project yield should be; and how it would affect other sections of the SWP contracts, particularly Article 18(a), the agricultural-shortage-first provision.

Each of these factual issues may have been factors that DWR would have had to consider in its discretionary determination of whether to invoke the "permanent shortage" provision of the existing contract, and thus, whether the EIR should have deemed it "reasonably expected to occur in the foreseeable future." (Cal. Code. Regs., tit. 14, § 15126.6(e)(2).)

By assuming that these criteria could only be resolved in favor of invoking Article 18(b), the Court stepped into the shoes of the agency and substituted its judgment for the agency's analysis in the EIR. This conflicts with one of the touchstones of judicial review of CEQA cases. A court reviewing agency decisions under CEQA should give a "high degree of deference" to the agency, especially where the agency's presumed expertise is within the scope of its authority. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572.)

**B. The Court Based Its Requirements for a No**

### Project Analysis on the Incorrect Standard.

The Court of Appeal sets forth what appears to be a new standard for what must be included in the no project analysis:

Even assuming the plausibility of defendants' interpretation of Article 18, subdivision (b), and their related factual assertion that requests are unlikely to outstrip supply, plaintiffs posit an *equally plausible construction*, that Article 18, subdivision (b), can be invoked when entitlements and supply are chronically imbalanced. So long as Article 18, subdivision (b), *can be plausibly construed* in a manner that would result in significant environmental consequences, its elimination should be considered and discussed in the EIR. (Slip opn. p. 29; emphasis added.)

\* \* \* \*

Quite simply, *the question was not whether article 18, subdivision (b), was likely to be implemented in the near future*, but what environmental consequences were reasonably foreseeable by retaining or eliminating Article 18, subdivision (b)'s solution to a permanent water shortage. (Slip opn. p. 33; emphasis added.)<sup>8</sup>

This standard conflicts with the standard in the CEQA Guidelines, which state that the no project alternative is to consider the existing conditions, "as well as what would be *reasonably expected to occur in the foreseeable future* if the project were not approved, based on current plans and consistent with available infrastructure and community services." (Cal. Code Regs., tit. 14, § 15126.6(e)(2); emphasis added.)

The requirement that any "plausible construction" of a contract be part of the baseline description for comparison of alternatives is a new standard not previously enunciated by any other court of appeal. This standard would require speculation on at

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8. It is unclear from the decision whether the Court of Appeal's real criticism of the EIR is that Article 18(b) would be invoked because of the permanent shortage the Court concluded exists under the no project forecast, or that the true environmental consequences of deleting Article 18(b) from the contract were not sufficiently considered in the EIR as part of the project itself. (Slip opn. pp. 29-35.)

least two levels: first, whether there is "any plausible construction," and second, what significant environmental impacts of those possible actions and their possible impacts could occur as a result of that plausible construction.

A further difficulty exists because if there is a possibility that a government agency may exercise some discretionary decision within its authority, that option, however remote it may be, must be considered as part of its no project alternative. Moreover, if there is a possibility that one of these discretionary decisions (or in this case, the non-exercise of that discretion) might be misused by another agency in reaching its own discretionary decisions, the environmental impacts of the second agency's many possible choices must be considered in the first agency's no project analysis. The Court of Appeal's statement of what must be included in the environmental baseline not only conflicts with the CEQA Guidelines, it sets up an elaborate decision-tree of contingencies that must now be considered whenever an EIR is prepared pursuant to CEQA.

If this attenuated connection is the new standard, it is difficult to understand how an agency could ever foresee all the possible contingencies that would be required to produce an adequate EIR.

C. An Administrative Agency Decision Under CEQA May Not Be Overturned Based On Unsubstantiated Opinion.

The type of evidence that CEQA requires to support an administrative determination does not include:

Argument, speculation, unsubstantiated opinion or narrative. . . .  
Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.  
(Pub. Resources Code, § 21082.2(c).)

Referring to the comments on the Draft EIR by members of the public upon which the court relies, the court states that:

The comments merely corroborate the *common sense notion* that land use decisions are appropriately predicated in some large part on assumptions about the available water supply. There is certainly the *possibility* that local decision makers are seduced by contractual entitlements and approve projects dependent on water worth little more than a wish and a prayer. The invocation of Article 18, subdivision (b), as well as the *possibility* that Article 18, subdivision (b), *might be invoked* could therefore affect planning decisions. (Slip opn. pp. 32-33; emphasis added.)

“Common sense notions” and unsubstantiated opinions have been consistently rejected as substantial evidence under CEQA. For example, speculation and generalizations about traffic based on commenters’ opinions, but not on factual evidence in the record, were rejected as having no evidentiary value in *Citizen Action To Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756. Similarly, information asserted to be “common knowledge” is not substantial evidence if it is not based on personal observation or experience. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

Without citing any factual support, the Court concludes: “Thus, where land use planning determinations *can be made* on the basis of entitlement rather than real water, development *can outpace* the availability of water, leading to detrimental environmental consequences, excessive groundwater pumping, and pressure to develop additional water



supplies.” (Slip opn. 31; emphasis added.)

The Court of Appeal’s belief that local land use planners would misuse the SWP’s Table A is based on vague, unsubstantiated comments on the DEIR. The comments provide no specific examples or factual evidence that would suggest that DWR’s Table A entitlement data has any link to the many city and county planning decisions that are made each year. (Slip opn. pp. 30-33.) There is nothing in the record linking DWR’s statutory authority or responsibility to local land use decisions.<sup>9</sup>

This far-reaching range of possibilities that the Court of Appeal would require conflicts with the longstanding limitation on a reviewing court’s scope of review in CEQA actions. An agency determination *must be upheld* if it is supported by substantial evidence in the record. “Determinations in an EIR must be upheld if they are supported by substantial evidence; the mere presence of conflicting evidence in the administrative record does not invalidate them.” (*Barthelemy v. Chino Basin Mun. Water Dist.*(1995) 38 Cal.App.4th 1609, 1620.)

Review should be granted to affirm the limited scope of review under CEQA, whereby a reviewing court must uphold an agency decision if it is based upon substantial evidence in the record.

## II.

### **IN A REVERSE VALIDATION ACTION CHALLENGING A CONTRACT BETWEEN TWO AGENCIES, THIS COURT SHOULD REQUIRE PERSONAL JURISDICTION OVER EACH PUBLIC AGENCY.**

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9. With a few limited exceptions, the public agencies contracting with DWR for water supply have no authority over land use decisions. (DEIR p. 1-5.)

In addition to the CEQA causes of action, the appellants alleged a cause of action pursuant to California's validation statute. (§ 860 et seq.) The validation claim challenges the Monterey Amendments in general, and "the Kern Water Bank Contract" specifically.

The question for this Court is whether personal jurisdiction over both contracting agencies is necessary to challenge a contract entered into between two public agencies.

Also known as a "reverse validation" action,<sup>10</sup> section 863 allows "any interested person" to challenge an action if the public agency itself has not brought a validation action. Section 863 requires that when challenging an action subject to section 860, "in addition to [the summons] being directed to 'all persons interested in the matter . . .,' it shall also be directed to the public agency."

The Court of Appeal ruled that it was not necessary for the appellants to obtain personal jurisdiction over each of the public agencies whose contracts were being challenged, and that it was sufficient to name and serve only one of the contracting parties, in this case, the Department. The Court of Appeal held that because the trial court had jurisdiction over the res of DWR's actions, it could adjudicate the validity of the Monterey Amendments. (Slip opn. p.45.)

**A. The Interpretation of Code of Civil Procedure  
Section 863 as Applied to Public Agency  
Contracts is a Question of First Impression.**

Section 860 is applicable to any public agency which is authorized by Government Code sections 53511 and 17700 to bring a validation action. Section 863 requires service and summons be directed to the public agency that could have brought a validating action pursuant to section 860. Here, where each public agency to the Monterey Amendments contracts had authority to bring an action under section 860, each of those agencies is also one of the "public agencies" as used in the first sentence of Section 863.

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10. See *County of Riverside v. Superior Court* (1997) 54 Cal.App.4th 443, 445.

If no proceedings have been brought by the *public agency* pursuant to this chapter, any interested person may bring an action within the time and in the court specified by section 860 to determine the validity of such matter. (§ 863; emphasis added.)

Nothing in the statute suggests that where two or more public agencies are parties to a contract, "the public agency" as used in section 860 does not include *each* public agency which has the authority to bring a validation action under section 860. Although "the public agency" is stated in the singular in section 863, section 17 provides that whenever the code uses a word in the singular, it includes the plural. We have found no cases directly on this question, and the Court of Appeal cites none. However, interpreting the statute to apply to "public agencies" in the plural is the only logical approach.

Interpreting section 863 to permit service on only one contracting public agency ignores the legal and practical effect of contract law. As with any legally binding contract, each public agency has rights and duties under the contract obligations created by the formal agreement, and neither can unilaterally alter or disregard its obligations under the contract. Under the Court of Appeal's narrow construction, a third party could bring a validation action against any one party to a public agency contract, publish the notice and summons in a county far away from the second agency's office, and without actual notice to the second agency, challenge the rights that the second agency relied upon in its contract. In the situation here, sanctioned by the Court of Appeal, a local water agency, relying upon the terms of its contract with the Department, might never know that its water supply contract is being challenged in a court of law.

This Court's review is necessary to remove the uncertainty created by the Court of Appeal's decision for the public agencies that rely on their contracts with other public agencies and that need to be able to protect their rights when those contracts are challenged.

**B. The Final, Nonreviewable Order on the Motion to Quash Is Binding on the Issues Which It Addressed.**

The Court of Appeal held that while the trial court's order quashing service on the twelve contractors meant that they could not be joined as parties in the validation proceeding, the ruling was not binding in effect on the viability of the validation proceeding because it only affected the ability to obtain in personam jurisdiction. The Court of Appeal ruled that in personam jurisdiction over the public agency contractors was not required as long as DWR was named and served, and that because of the in rem nature of the proceedings, the trial court order did not affect the appellants' ability to proceed with the validation action.

The trial court's ruling, however, was given binding effect by this Court's ruling on the timeliness of the appeal and by section 906.<sup>11</sup>

Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the rights of a party. The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken. (§ 906.)

Under a straightforward reading of section 906, the Court of Appeal had no authority to consider the trial court's final ruling that any public agency whose action is being challenged pursuant to section 863 shall be a defendant, and that it is not "sufficient service of process to treat any such public agency as an interested party and give it published or mailed notice of the pending action as such. . . ." (V AA p. 1179-1181.)

A number of court of appeal decisions support the binding nature of such a final order on subsequent proceedings in the same case. "[T]he law of this state does not allow, on an appeal from a judgment or appealable order, a review of any decision or order from which an appeal might previously have been taken." (*Guenter v. Lomas & Nettleton Co.*

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11. The decision also disregards the binding nature of a final judgment in a validation proceeding which is conclusive "as to all matters therein adjudicated or which at that time could have been adjudicated." (§ 870(a).)

(1983) 140 Cal.App.3d 460, 465; see also, *Ostling v. Loring* (1994) 27 Cal.App.4th 1731.)

Accordingly, the Court of Appeal was without jurisdiction to consider the appeal on the same issue—the need to name and serve any public agency

whose action is challenged under section 863—which could have been, but was not, timely appealed in the final order on the motion to quash.<sup>12</sup>

### CONCLUSION

As this Court stated thirty-seven years ago, “[t]he conduct of an important public enterprise requires that broad power and discretion be granted to the administrative agency in charge of the project.” (*Metropolitan Water District of Southern California v. Marquardt*, *supra*, 59 Cal.2d 159, 177.) Such broad discretion was granted to the Department by the voters in 1960 and affirmed by this Court in *Marquardt*. Both the Department and CCWA were involved in drafting and approving the EIR, which concluded that it was unlikely that Article 18(b) would be invoked in the foreseeable future. The standard of review used by the Court of Appeal conflicts with the well-established “substantial evidence” standard of review that governs in CEQA actions. By using this newly developed standard, the Court abrogated long-standing principles of deference to administrative decision-making authority. The need to reaffirm this longstanding limitation on judicial review of administrative agency decisions, and the enormous consequences that follow as a result of the precedent set by this case, are compelling reasons for this Court to review the decision below.

The Court of Appeal decision also poses questions of first impression regarding the workings of the validation statute and whether public agencies must receive legal notice

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12. Another basis for the binding nature of the order on the motion to quash is that it is *res judicata* as a prior appealable order in the same action that was not appealed. (*In re Matthew C.* (1993) 6 Cal.4th 386.)

of challenges to their contracts with other public

agencies. This Court's clarification is necessary to assure continued effectiveness of the validation statutes and contracts entered into in reliance upon that statutory scheme.

Dated: October 25, 2000

Respectfully submitted,

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**AMENDMENT NO. 6 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 6 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Water Supply Contract", "Agreement", or "contract", is made as of this 7th day of December, 2004, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City" or "American Canyon";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California that specifies the amount of water available to Agency for disbursement to its member units in any given year and a number of component charges for water allocated and delivered; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Water Supply Contract (the "Agreement") as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, and by Amendment No. 5 as of September 21, 2000, under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, the Parties to this Agreement each have and possess the power to acquire, construct, operate and maintain works and facilities for the development, transmission and use of water resources and water rights including, without limitation, works and facilities to divert, store, pump, treat, transport and deliver water and to operate power facilities incidental to such pumping and delivery of water and to contract with the United States, the State of California, municipalities, districts and public and private corporations in the construction and operation of works and the provision of services for the purpose of conserving, providing and transporting water for beneficial uses; and

**WHEREAS**, the parties believe that it is in the best interest of Agency and City to amend the Agreement to authorize Agency to become a member of the State Water Contractors Authority Joint Powers Agreement (SWPCA), attached hereto as Exhibit "A-1", and incorporated by reference herein; and

**WHEREAS**, the participation in the SWPCA will benefit the Agency and City through potential improvements in the efficiency and effectiveness of operations related to the State Water Project and the North Bay Aqueduct; and

**WHEREAS**, pursuant to the Agreement Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the Water Supply Contract with City including costs related to as a result of membership in the SWPCA; and

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Agreement shall be modified, as Amendment No. 6, as follows:

1. Paragraph 17 is added to the Contract for Water Supply from North Bay Aqueduct between NCFCWCD and City of American Canyon to read as follows:

17. State Water Project Contractors Authority

(a) Agency shall become a member of the State Water Project Contractors Authority (SWPCA), a joint powers authority established by and between the California public agencies that have contracts with the State of California, Department of Water Resources, for water supplies made available by the State Water Project and which are parties signatory to the Joint Powers Agreement establishing the Authority.

(b) District Engineer, or his written designee, shall represent the Agency on the Board of Directors of the SWPCA.

(c) (i) City shall reimburse Agency for all costs incurred due to membership in the SWPCA including membership administrative costs, Agency share of special projects performed by the SWPCA subject to the provisions of subdivision (ii), and any other expenses incurred by the Agency due to membership in the SWPCA. These costs shall be apportioned among all member units directly proportional to their annual entitlements for each year

(ii) City shall pay its share of the costs described in sub-paragraph (i) in monthly installments to Agency, not necessarily equal, and not later than fifteen (15) days after receipt of Agency's invoices. Agency's invoices shall be in amounts sufficient to allow Agency to receive funds to pay City's proportionate share of Agency's current obligations to the SWPCA no sooner than thirty (30) days prior to the date the same become due to the SWPCA.

(d) Agency shall notify City in writing of its intention to enter into a Project Agreement pursuant to Section 4.3 of the Joint Powers Agreement establishing the SWPCA no later than forty-five (45) days prior to the date the Project Agreement is proposed to be executed by the Agency. Written notification shall include a description of the Specific Project (as defined by Section 4.3) and its cost to the Agency. The Agency shall not execute the Project Agreement unless and until each Member Unit has provided Agency with written consent to its share of the estimated cost of the Project.

(e) Agency shall not withdraw from the SWPCA without written authorization from each Member Unit.

(f) City shall defend, indemnify, and hold harmless Agency, its officers, agents, and employees ("Agency") from and against any and all claims, demands or liabilities of whatever nature which arise out of or result from their actions as a member of the SWPCA, excepting only claims resulting from the sole negligence of the Agency.

2. Agency and City acknowledge that it is the intent of the parties that the other Member Units within the service area of Agency under the State Water Supply Contract will also be amending their respective Water Supply Agreements with Agency in substantially the same manner as set forth above. For this reason, Amendment No. 6 of the Agreement shall be effective upon the date first above written or the date the last of the other Member Units has executed a similar amendment to its corresponding agreement, whichever is later.

3. Except as provided in (1) and (2), above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.6 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

**CITY OF AMERICAN CANYON**

**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By \_\_\_\_\_

Mayor

By

Mike Rippey

MIKE RIPPEY

Chairperson of the Board

**ATTEST:**

**ATTEST:**

By \_\_\_\_\_

City Clerk

By

Pamela Miller

PAMELA MILLER

District Secretary

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By \_\_\_\_\_

City Attorney

By

Robert C. Mark

ROBERT WESTMEYER

District Legal Counsel

**COUNTERSIGNED:**

APPROVED 12.7.04  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

Finance Director

PAMELA A. MILLER  
SECRETARY OF THE DISTRICT

BY

Henry Patterson Deputy



IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.6 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

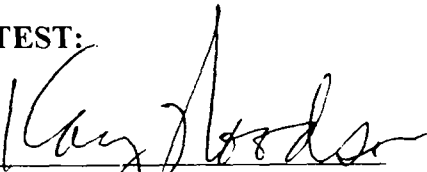
**CITY OF AMERICAN CANYON**

**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By   
LORI LUPORINI  
Mayor

By \_\_\_\_\_  
MIKE RIPPEY  
Chairperson of the Board

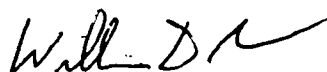
**ATTEST:**

By   
KAY WOODSON  
City Clerk

**ATTEST:**

By \_\_\_\_\_  
PAMELA MILLER  
District Secretary

**APPROVED AS TO FORM:**

By   
WILLIAM D. ROSS  
City Attorney

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
ROBERT WESTMEYER  
District Legal Counsel

**COUNTERSIGNED:**

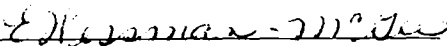
By   
ELIZABETH WESSMAN-McGEE  
Finance Director

EXHIBIT A-1

**JOINT POWERS AGREEMENT**

**STATE WATER PROJECT CONTRACTORS AUTHORITY**

This Agreement is made and entered into by and between the California public agencies that have contracts with the State of California, Department of Water Resources, for water supplies made available by the State Water Project which are parties signatory to this Agreement. These public agencies are sometimes referred to herein as "Parties" and/or "Members."

**RECITALS**

**WHEREAS**, California Government Code Sections 6500, *et seq.*, provide that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

**WHEREAS**, the Parties to this Agreement each have and possess the power to acquire, construct, operate and maintain works and facilities for the development, transmission and use of water resources and water rights including, without limitation, works and facilities to divert, store, pump, treat, transport and deliver water and to operate power facilities incidental to such pumping and delivery of water and to contract with the United States, the State of California, municipalities, districts and public and private corporations in the construction and operation of works and the provision of services for the purpose of conserving, providing and transporting water for beneficial uses; and

**WHEREAS**, the Parties to this Agreement desire to join together for the purposes specified in Section 4.1 (Purpose) hereof:

**NOW, THEREFORE**, it is agreed by and between the Parties hereto as follows:

**Article 1**  
**Definitions**

**Section 1.1 Definitions:** As used in this Agreement, unless the context requires otherwise, the meaning of the terms set forth below shall be as follows:

(a) "Auditor" shall mean that person, designated by the Board of Directors, who is to perform the duties of the Auditor of the Authority as required by law and as directed by the Board of Directors.

(b) "Authority" shall mean the State Water Project Contractors Authority created by this Agreement.

(c) "Board of Directors" or "Board" shall mean the governing body of the Authority as established by Article 6 (Board of Directors) of this Agreement.

(d) "Contractor" or "State Water Project Contractor" shall mean any public agency contracting with the State of California for a Water Supply Contract, or any public agency assignee of rights under such a contract.

(e) "Department" or "DWR" shall mean the Department of Water Resources of the State of California.

(f) "Law" or "the Law" shall mean the Joint Exercise of Powers Act, being Articles 1 and 2 of Chapter 5 of Division 7 of Title I of the California Government Code (Sections 6500, *et seq.*).

(g) "Maximum Annual Table A Amount" shall mean the maximum amount specified in Table A of the Contractor's Water Supply Contract.

(h) "Member" shall mean any Contractor that becomes a signatory to this Agreement.

(i) "Project Agreement" is an agreement of the type specified in Section 4.3 (Specific Projects).

(j) "Specific Project" has the meaning set forth in Section 4.3 (Specific Projects).

(k) "State" shall mean the State of California.

(l) "State Water Contractors" shall mean the nonprofit mutual benefit corporation of State Water Contractors.

(m) "State Water Project," "Project" or "SWP" shall mean those project facilities defined in the respective Water Supply Contracts of Contractors.

(n) "Treasurer" shall mean that person, designated by the Board of Directors, who is to perform the duties of the Treasurer of the Authority as required by law and as directed by the Board of Directors.

(o) "Water Supply Contract" or "Contract" shall mean the respective Contract for a water supply between each Contractor and the State, made pursuant to the California Water Resources Development Bond Act, as amended (Water Code Sections 12930, *et seq.*), and any amendments to such Contracts.

## **Article 2**

### **Creation of the State Water Project Contractors Authority**

**Section 2.1 Creation:** There is hereby created pursuant to the Law, a public entity to be known as the "State Water Project Contractors Authority," which shall be an agency or entity which is separate from the Parties to this Agreement.

## **Article 3**

### **Term of Agreement**

**Section 3.1 Term:** This Agreement shall become effective on the date on which the Chief Executive Officer ("CEO") of the Metropolitan Water District of Southern California ("MWD") and the General Manager of the Kern County Water Agency ("KCWA") certify that it has been executed by five or more Contractors that have a combined total of at least seventy-five percent (75%) of the Maximum Annual Table A Amounts of all Contractors.

## **Article 4**

### **Purposes and Powers**

**Section 4.1 Purpose:** The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common to each of the Parties, as described in the Recitals above, to provide services to and to operate and maintain, through contracts with the State, portions of the State Water Project and to acquire, construct, own, operate, maintain and replace other facilities appurtenant thereto, to acquire water and water rights and to do all acts related or incidental thereto, either by the Authority alone or in cooperation with the State, the United States or other entities, in order to provide for the development and delivery of water from the State Water Project to Contractors.

**Section 4.2 Powers:** The Authority shall have the power to exercise any power common to all of the Parties as authorized by the Law and is hereby authorized to do all acts necessary for the exercise of these common powers, including, but not limited to, any of the following:

- (a) To make and enter into contracts;
- (b) To incur debts, liabilities or obligations;
- (c) To acquire, by eminent domain or otherwise, and to hold and dispose of property necessary to the full exercise of its powers;
- (d) To contract for the services of engineers, attorneys, technical specialists, financial consultants, and separate and apart therefrom, to employ such other persons as it deems necessary;
- (e) To issue bonds, notes and other indebtedness, and to enter into leases, installment sale and installment purchase contracts, all as provided for in Section 11.8 (Issuance of Bonds, Notes and Other Indebtedness)
- (f) To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, the State or other public or private entities necessary for the Authority's full exercise of its powers;
- (g) To perform all acts necessary or proper to carry out fully the purposes of this Agreement; and
- (h) To the extent not hereinafter specifically provided for, to exercise any powers in the manner and according to the methods provided under the laws applicable to the Coachella Valley Water District.

**Section 4.3 Specific Projects:** Except for investigations, studies and matters of general administration, the Authority shall function through agreements with the State Department of Water Resources, Members and others providing for the Authority to undertake Specific Projects, including but not limited to, the operation and maintenance of portions of the State Water Project and acts related or incidental thereto to implement Specific Projects. A Specific Project may involve all or less than all the Members of the Authority, provided that no Member shall be required to be involved in a Specific Project, as a Member of the Authority, involving less than all of the Members of the Authority without its approval. The details of each Specific Project involving less than all the Members shall be set forth in a Project Agreement executed by the participating Members. The Board of Directors of the Authority shall have the authority to disapprove Specific Project Agreements upon determination that the Project Agreement has specific, substantial adverse financial impacts upon Members not executing the Specific Project Agreement. If a Specific Project is to be undertaken for less than all of the Members of the Authority, the Members intending to participate in that Specific Project shall each appoint a representative to a project committee to develop the Project Agreement for that project. The Project Agreement shall set forth the duties, obligations and voting rights of the Members participating in the project.

## **Article 5**

### **Members**

**Section 5.1 Membership:** Each Contractor that possesses the powers described in the Recitals and in Section 4.2 (Powers) of this Agreement that executes this Agreement and any addenda, amendments or supplements thereto, and which has not, pursuant to the provisions hereof, withdrawn from this Agreement shall be a Member of the Authority. Any Contractor that executes this Agreement that does not possess such powers or who ceases to have such powers or who is subsequently determined not to have such powers shall be ineligible for Membership in the Authority.

**Section 5.2 Classification of Members:** The Authority shall have eight classes of Members, as follows, with no Contractor holding a membership in more than one class:

(a) **Class 1**

Those Feather River and North Bay Aqueduct Contractors, entitled to delivery of SWP water north of the Delta, or along the North Bay Aqueduct which are signatories to this Agreement.

(b) **Class 2**

Those South Bay Aqueduct Contractors entitled to delivery of SWP water along the South Bay Aqueduct which are signatories to this Agreement.

(c) **Class 3**

Those San Joaquin Valley Contractors entitled to delivery of SWP water within the San Joaquin Valley, except the Kern County Water Agency, which are signatories to this Agreement.

(d) Class 4

The Kern County Water Agency, if it is a signatory to this Agreement.

(e) Class 5

Those Coastal Aqueduct Contractors entitled to delivery of SWP water along the Coastal Aqueduct downstream of the Devil's Den Pumping Plant which are signatories to this Agreement.

(f) Class 6

The Metropolitan Water District of Southern California, if it is a signatory to this Agreement.

(g) Class 7

Those Southern California West Branch Contractors entitled to delivery of SWP water along the West Branch of the California Aqueduct, except The Metropolitan Water District of Southern California, which are signatories to this Agreement.

(h) Class 8

Those Southern California East Branch Contractors entitled to delivery of SWP water along the East Branch of the California Aqueduct, except The Metropolitan Water District of Southern California, which are signatories to this Agreement.

**Section 5.3 Admission to Membership:** Any Contractor that has not executed this Agreement on or before its effective date shall be admitted to membership upon the approval of the Board of Directors, the payment of any applicable fees and charges and upon becoming a signatory to this Agreement.

**Section 5.4 Meetings of Members:** The initial meeting of Members shall be called by the CEO of the MWD and the General Manager of the KCWA and held at a place within California within thirty (30) days of the effective date of this Agreement. Thereafter, meetings of Members shall be held at such locations in California as may be designated from time to time by the Board of Directors. Each Member shall certify to the Secretary of the Authority in writing the names of the persons appointed by the Member from time to time to be its representative and its alternate to represent and vote for the Member at all meetings of Members and meetings of classes of Members. Each representative (or alternate) shall have the voting rights provided for in Section 5.12 (Voting).

**Section 5.5 Regular Annual Meeting:** The Members shall meet annually during the second quarter of each calendar year, at a time and place set by the Board, or at such other times as may be determined by the Board, for receiving a report on activities of the Authority and holding the meeting of classes required pursuant to Section 5.7 (Meetings of Classes) for the purpose of holding the election of Directors. If the election of Directors does not occur at any

such meeting of the Members, the Board shall cause the election of Directors to be held at a special meeting of the classes called and held as soon as it is reasonably possible after the adjournment of the regular meeting of the Members. If the date fixed for the regular meeting of Members falls on a legal holiday specified in Section 6700 of the Government Code, such meeting shall be held at the same hour and place on the next succeeding full business day.

**Section 5.6 Special Meetings of Members:** Special meetings of the Members shall be called by the Board of Directors and held at such times and places within California as may be ordered by action of the Directors. Five percent or more of the Members may also call special meetings for a purpose specified in Section 5.5 (Regular Annual Meeting).

**Section 5.7 Meetings of Classes.** Meetings of a class of Members may be called by any Member of that class and held at such times and places within California as selected by such Member for any purpose, including the purpose of voting on the removal of a Director selected by that class pursuant to Section 6.7(g) (Removal of Directors without Cause) of this Agreement. The remaining provisions of this Agreement shall apply to the extent practicable, to such special meetings of classes of Members.

**Section 5.8 Notice of Meetings:** Except in the case of emergencies or special meetings, written notice of every meeting of Members and of every meeting of classes of Members shall be either personally delivered or mailed by First Class United States Mail, postage prepaid, to each Member, at least seven (7) days before the date of the meeting. The notice shall state the place, date and time of the meeting. In the case of annual meetings, the notice shall state those matters which the Board of Directors, at the time that notice was given, intends to present for action by the Members. In the case of special meetings, the notice shall include the subject or subjects of the meeting. The notice of any meeting at which Directors are to be elected shall include the names of all those who are nominees at the time the notice is given to the Members.

**Section 5.9 Quorum:** A quorum of any meeting of Members or of any meeting of a class of Members shall consist of a majority of the Members or the Members of that class on the date the meeting is held. Except as otherwise provided in this Agreement, every act or decision made by a majority of the Members present at a meeting duly held at which a quorum is present is the act of the Members. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken, other than adjournment, is approved by at least a majority of the Members required to constitute a quorum. In the absence of a quorum, any meeting of the Members may be adjourned from time to time by a vote of the majority present, but no other business may be transacted except as provided for in this section.

**Section 5.10 Conduct of Meetings:** The President of the Authority or, in the President's absence, the Vice President, shall be the Chair of and shall preside over meetings of the Members. The Secretary of the Authority shall act as the secretary of all meetings of Members, provided that in the Secretary's absence, the Chair shall appoint another person to act as secretary for the meeting.

**Section 5.11 Rules of Order:** A majority of the Members may adopt rules governing meetings if not inconsistent or in conflict with this Agreement. In the absence of rules adopted

by the Members, Roberts' Rules of Order, as they may be amended from time to time, shall govern the meetings of Members in so far as they are not inconsistent or in conflict with this Agreement or any Authority bylaws.

**Section 5.12 Voting.** Except as otherwise provided by this Agreement, each Member shall have one vote.

**Section 5.13 Review of Actions by the Board of Directors:** On demand of any Member, any action of the Board shall be subject to a referendum by the Members. Such action shall be nullified if at the next regular or special meeting of the Members either:

- (a) a majority of the Members vote against it, or
- (b) Members who cumulatively have a majority of the Maximum Annual Table A Amounts of all of the Members vote against it.

Each such demand for referendum shall be received by the General Manager within fourteen (14) calendar days of the date of the Board's action. Each such demand may be made by telephone, facsimile, e-mail, hand delivery or mail. Any Member making such demand shall communicate that fact to all of the Members within the fourteen-day period. If such a demand is made, the contested action shall be suspended until the vote of the Members at the next meeting of the Members has occurred. The General Manager shall promptly communicate the results of the voting to the Members.

## **Article 6**

### **Board of Directors**

**Section 6.1 Board of Directors:** The Authority shall have a minimum of three (3) and no more than nine (9) Directors selected pursuant to Section 6.3 (Selection of Directors). Collectively, the Directors shall be known as the "Board of Directors" or the "Board."

**Section 6.2 Qualifications:** The Directors of the Authority shall be officers or employees of the Members or other designated representatives of the Members.

**Section 6.3 Selection of Directors:** Each class of membership as defined in Section 5.2 (Classification of Members) of this Agreement, is entitled to select one (1) Director, except Class 8, which is entitled to select two (2) Directors, if two or more Southern California East Branch Contractors are Members of the Authority. Each class may select one or more alternates for its Director to act in the absence of the Director. The Directors shall be selected as follows:

(a) The Directors selected by Classes 4 and 6 shall be appointed by the Kern County Water Agency and The Metropolitan Water District of Southern California, respectively. The names of such Directors shall be announced by the representatives of these Members at the initial meeting of the Members and thereafter at the annual meetings of the Members.

(b) The Directors selected by Classes 1, 2, 3, 5, 7 and 8 shall be elected at the initial meeting of the Members and thereafter at the annual meetings of the Members. A majority vote of Members of the class shall be required for election of a Director of that class. Each Member



of each class shall be entitled to one (1) vote for each Director to be elected by that class. If there is only one member in a class, the Director for that class shall be appointed by that Member.

(c) If no eligible Contractor in the class is a Member of the Authority, no Director shall be selected for that class and the total number of Directors of the Board shall be reduced accordingly, but in no case shall the number of Directors be less than three (3).

**Section 6.4 Terms of Office:** The terms of office for Directors shall be one year, beginning on July 1 and ending on the following June 30, except that the terms of the Directors first elected shall be from the date of their election until the second June 30 thereafter. Each Director shall hold office until such Director's successor is elected or appointed and qualifies for such office. If a Director is removed at a special meeting of the appropriate class as provided for in Section 6.7(g) (Removal of Directors without Cause) of this Agreement, such Director shall hold office until his or her successor is elected or appointed and qualifies as a Director.

**Section 6.5 Nomination and Election of Directors:** Any person qualified to be a Director selected by a class may be nominated by any Member of that class by any method selected by Members of that class. The candidate in each class receiving the highest number of votes is elected. The Directors shall be eligible for re-election, provided they continue to meet the qualifications required by this Agreement.

**Section 6.6 Compensation:** The Directors shall serve without compensation from the Authority.

**Section 6.7 Board Meetings:**

(a) **Place of Meetings.** All regular meetings of the Board shall be held in California at such times and places as determined by the Board.

(b) **Special Meetings.** Special meetings of the Board may be called by the President, the Vice President, the Secretary or any two (2) Directors. Except in the case of emergencies, special meetings shall be held on a minimum of four (4) days' notice by First Class Mail, postage prepaid, or on forty-eight (48) hours' notice delivered personally or by telephone or facsimile. Notices of special meetings need not be given to any Director who signs a waiver of notice or a written consent to the holding of the meeting or any approval of the minutes thereof, whether before or after the meeting, or attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such Director. All such waivers, consents and approvals shall be filed with the Authority records or made a part of the minutes of the meeting.

(c) **Quorum.** A majority of the Directors then in office, or their respective alternates in the absence of a Director, constitutes a quorum of the Board for the transaction of business, except as hereinafter provided.

(d) **Acts or Decisions of the Board.** Except as otherwise provided in this Agreement, every act or decision made by a majority of the Directors or their alternates in the absence of a Director present at a meeting duly held at which a quorum is present is the act of the Board, provided, however, that any meeting at which a quorum was initially present may continue to

transact business notwithstanding the withdrawal of Directors if any action taken is approved by at least a majority of the required quorum for such meeting. A written summary of all Board actions shall be mailed by First Class Mail to all Members within three (3) working days after such action was taken.

(e) Conduct of Meetings. The President or, in the President's absence, the Vice President, shall preside at all meetings of the Board of Directors, the Secretary of the Authority or, in the Secretary's absence, any person appointed by the presiding officer shall act as Secretary of the Board.

(f) Adjournment. A majority of the Directors or their alternates present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned more than twenty-four (24) hours, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

(g) Removal of Directors without Cause. At a special meeting of the appropriate class Members, a Director or alternate may be removed without cause if such removal is approved by two-thirds (2/3) of the Members of the class.

(h) Resignation of a Director. Any Director may resign effective on giving written notice to the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. A successor shall be elected as provided for in this Agreement.

(i) Vacancies on the Board. A vacancy on the Board of Directors shall exist on the death, resignation or removal of any Director, whenever the number of Directors is increased, or on the failure of the Members at any election to elect or appoint the full number of Directors authorized. Vacancies on the Board of Directors may not be filled by the Directors. A vacancy shall be filled only by the Members of the appropriate class of Members.

## Article 7

### Conduct of Meetings

**Section 7.1 Compliance with Brown Act:** All meetings of the representatives of the Members, of the representatives of the classes of Members, of the Board of Directors, and the directors of any Specific Project, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act, California Government Code Sections 54950, *et seq.*, to the extent applicable.

**Section 7.2 Teleconferencing:** The Members, the Board of Directors, and the Members of a class with regard to meetings of that class, and the directors of any Specific Project, may use teleconferencing in connection with any meeting in conformance with, and to the extent authorized by, the Ralph M. Brown Act.

## Article 8

### Officers

**Section 8.1 Numbers and Titles:** The officers of the Authority shall be a President, a Vice President, a Secretary, a General Manager, a Treasurer, an Auditor, and such other officers with such titles and duties as shall be determined by the Board. Any number of offices may be held by the same person, provided that the President shall not also serve as the Treasurer or Auditor. The Board may authorize the Treasurer of one of the Members to serve as the Treasurer; provided that the funds of the Authority are kept in accounts separate from those of that Member. The Vice President or, in the Vice President's absence, the Secretary shall exercise all powers of the President in the President's absence or inability to act. The President and the Vice President shall be members of the Board of Directors.

**Section 8.2 Appointment and Resignation:** The officers shall be chosen annually by, and serve at the pleasure of, the Board. Any officer may resign at any time on written notice to the Board.

**Section 8.3 Chief Executive Officer:** The General Manager appointed by the Board of Directors shall serve as the Chief Executive Officer of the Authority.

## **Article 9**

### **Employees**

**Section 9.1 General Manager and Staff:** The Board of Directors shall employ a General Manager. To fill positions approved by the Board, the General Manager shall employ such additional full-time and/or part-time employees and assistants and independent contractors as may be necessary from time to time to accomplish the purposes of the Authority.

## **Article 10**

### **Committees**

**Section 10.1 Committees:** The Board may, by the action of a majority of a number of the Directors then in office create from time to time various committees to carry on the business of the Authority.

## **Article 11**

### **Financial Provisions**

**Section 11.1 Fiscal Year:** The fiscal year of the Authority shall be from July 1 of each year to the succeeding June 30.

**Section 11.2 Depositary:** The Treasurer shall be the depositary and have custody of all money of the Authority from whatever source and shall perform the duties specified in Government Code Section 6505.5. All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered to the Board and the Members of all receipts and disbursements at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by a Member or Director at all reasonable times upon reasonable notice. The Auditor shall cause an independent audit to be made of the accounts and records of the Authority annually by a certified public accountant, which shall be conducted, at a

minimum, in accordance with the requirements of the State Controller under Section 26909 of the California Government Code, and shall conform to generally accepted auditing standards.

**Section 11.3 Property Bonds:** The Board shall from time to time designate the officers and persons, in addition to the Treasurer and the Auditor, who shall have charge of, handle, or have access to any property of the Authority. Each such officer and person, including the Treasurer and the Auditor, shall file a bond in an amount designated by the Board. When fixing the amount of such bonds, the Board shall be deemed to be acting for and on behalf of the Members who appointed them in compliance with Government Code Section 6505.1

**Section 11.4 Budget:** As soon as practicable after the effective date of this Agreement, and thereafter at least thirty (30) days prior to the commencement of each fiscal year, the General Manager shall present a proposed budget to the Board for the forthcoming fiscal year. Prior to the commencement of the fiscal year, the General Manager shall present a budget to the Board for the Boards' adoption.

**Section 11.5 Contributions to General Administration and Expense Account:** This Account, which is to be used for the purpose of funding general overhead and administrative expenses for the ongoing operations of the Authority, shall be established by the Board and approved in connection with the annual budget process. Initial contributions to this account shall be allocated among the Members in proportion to their respective Maximum Annual Table A Amounts. Subsequent contributions shall be allocated among the Members in accordance with benefits and shall require the approval of a majority of the Members and of Members who have cumulatively a majority of the Maximum Annual Table A Amounts of all of the Members in order to be effective. Such subsequent contributions shall be established no later than ninety (90) days prior to the beginning of each fiscal year. Any Member that does not make its contribution to the Account within sixty (60) days after the beginning of the fiscal year shall be deemed to have withdrawn as a Member and ceased to be a Party to this Agreement; provided, that such withdrawal does not in any way impair any contracts, resolutions, indentures or other obligations of the Authority, including obligations for Specific Projects, then in effect. No refund or repayment of any portion of the Authority's assets shall be made to the Member ceasing to be a Party to this Agreement.

**Section 11.6 Other Contributions:** Contributions or advances of other funds and of personnel, equipment or property may be made to the Authority by or on behalf of any Member for any purposes of this Agreement, and credited to the Member's obligations, with the consent of the Board. Any such advances may be made subject to repayment, and in such case shall be repaid in the manner agreed upon by the Member making the advance and the Authority.

**Section 11.7 Return of Contributions and Revenue:** In accordance with Government Code Section 6512.1, repayment or return to the Members of all or any part of any contributions made by Members and any revenues received by the Authority may be directed by the Board at such time and upon such terms as the Board may decide. The Authority shall hold title to all funds, and property acquired by the Authority during the term of this Agreement.

**Section 11.8 Issuance of Bonds, Notes and Other Indebtedness:** The Authority may issue bonds, notes or other forms of indebtedness if such issuance is approved at a meeting of the Members by two-thirds of all of the Members and by Members who cumulatively have at least

seventy-five percent (75%) of the Maximum Annual Table A Amounts, of all of the Members. Bonds, notes or other forms of indebtedness to be issued for Specific Projects must also be approved by the Members who are parties to the Project Agreement by the vote required for such indebtedness set forth in the Project Agreement. The Secretary shall notify all of the Members by certified mail, return receipt requested, of the approval for incurring of such indebtedness within ten (10) days after its approval. Any Member may within thirty (30) days of the receipt of such notice withdraw from this Agreement by giving written notice to the General Manager, provided that such withdrawal does not in any way impair any contracts, or other indebtedness of the Authority then in effect. This right to withdraw is in addition to the Member's right to withdraw set forth in Section 13.1 (Withdrawal of Membership). No such bonds, notes or indebtedness shall be issued before the expiration of the time given in this Section to Members to withdraw from this Agreement.

## **Article 12**

### **Relationship of the Authority and Its Members**

**Section 12.1 Separate Entity:** The Authority shall be a public entity separate from the Parties to this Agreement. Unless, and to the extent otherwise agreed herein, the debts, liabilities and obligations of the Authority shall not be the debts, liabilities or obligations of the Parties. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as otherwise provided in this Agreement.

## **Article 13**

### **Withdrawal of Membership**

**Section 13.1 Withdrawal of Membership:** Any Member may withdraw from this Agreement by giving sixty (60) days written notice of its election to do so, which notice shall be given to the General Manager and to each of the Directors; provided, that such withdrawal does not in any way impair any contracts, resolutions, indentures or other obligations of the Authority, including obligations for Specific Projects, then in effect. No refund or repayment of any portion of the Authority's assets shall be made to the Member ceasing to be a Party to this Agreement.

**Section 13.2 Disposition of Property Upon Termination:** Upon termination of this Agreement, any surplus money on hand shall be returned to the Members in proportion to their contributions made. The Board of Directors shall first offer any property, works, rights and interest of the Authority for sale to the Members on terms and conditions determined by the Board. If no such sale to Members is consummated, the Board shall offer the property, works, rights and interest of the Authority for sale to any governmental agency, private party or persons for good and adequate consideration. The net proceeds from any sale shall be distributed among the Members in proportion to their contributions made. If no such sale is consummated, then all property, works, rights and interests of the Authority shall be given to the State Water Contractors.

## **Article 14**

### **Provision for Bylaws**

**Section 14.1:** As soon as practicable after the first meeting of the Board of Directors, the Board shall cause to be developed Authority bylaws to govern the day-to-day operation of the Authority.

## **Article 15**

### **Miscellaneous Provisions**

**Section 15.1 Notices:** Notices to Members hereunder shall be sufficient if delivered to the principal office of the respective Member.

**Section 15.2 Amendments To and Termination of Agreement:** This Agreement may be amended or terminated at any time at any duly constituted meeting of Members by a two-thirds (2/3) vote of the Members representing at least seventy-five (75%) of the Maximum Annual Table A Amounts of all of the Members .

**Section 15.3 Prohibition Against Assignment:** No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee, or third-party beneficiary of any Member shall have any right, claim or title to any part, share interest, fund, or asset of the Authority. This Agreement shall be binding upon, and shall inure to, the benefit of the successors of any Party

**Section 15.4 Agreement Complete** The foregoing constitutes the full and complete Agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

**Section 15.5 Severability:** Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

**Section 15.6 Withdrawal by Operation of Law:** Should the participation of any Party to this Agreement be decided by the courts to be illegal or in excess of that Party's authority or in conflict with any law, the validity of the Agreement as to the remaining Parties shall not be affected thereby, and each Party hereby agrees that it would have entered into this Agreement upon the same terms as provided herein if that withdrawing party had not been a participant in this Agreement.

**Section 15.7 Multiple Originals:** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 15.8 Limitations on Liability:** The Authority shall be authorized to defend, indemnify and hold harmless any Director, officer, agent or employee for actions taken or not taken within the scope of the authority given or granted by the Authority and from and against any claim or suit arising out of any act or omission of the Authority, the Board or any Director, officer, agent and employee in connection with this Agreement and may purchase insurance as the Board may deem appropriate for this purpose. In contemplation of Section 895.2 of the

Government Code, and pursuant to the authority contained in Sections 895.4 and 895.6 of that Code, each of the Members assumes that portion of the liability imposed upon the Authority or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of any Project Agreement entered into by that Member pursuant to Section 4.3 that is not covered by insurance, that is in proportion to its respective Maximum Annual Table A Amount to the total Maximum Annual Table A Amounts of all of the Members that are parties to such Project Agreement. As to any other injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement, each Member assumes that portion of the liability imposed upon the Authority or any of its Members, officers, agents or employees by law that is not covered by insurance, that is in proportion to its respective Maximum Annual Table A Amounts to the total Maximum Annual Table A Amounts of all of the Members. To achieve such purposes, each Member shall to the extent provided herein indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Section 895.2. The provisions of Section 2778 of the Civil Code are made a part of this Agreement as though fully set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by authorized officials thereof on the dates indicated below, which Agreement may be executed in counterparts.

**DISTRICT:**

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Mike Rippey  
Chairperson of the Board of Directors

ATTEST: PAMELA MILLER  
Secretary of the District Board

By: \_\_\_\_\_

APPROVED AS TO FORM:  
ROBERT WESTMEYER, District Counsel

By: \_\_\_\_\_

PROCESSED:

By: \_\_\_\_\_  
Deputy Clerk of the Board









**AMENDMENT NO. 7 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 7 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Water Supply Contract", "Agreement", or "contract", is made as of this 7<sup>th</sup> day of December, 2004, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City" or "American Canyon";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California Department of Water Resources ("DWR") that specifies the amount of water available to Agency for disbursement to its member units in any given year and a number of component charges for water allocated and delivered; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Water Supply Contract (the "Agreement") as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, by Amendment No. 5 as of September 21, 2000, and by Amendment No. 6 as of December 7, 2004 under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, DWR has contracts with Agency and other water agencies ("State Water Contractors") to deliver water from the State Water Contract ("SWP") where it calculates and assesses an annual charge to the State Water Contractors for water deliveries that includes as a component the Delta Water Charge ("DWC"); and

**WHEREAS**, Pursuant to the terms of these contracts, DWR is required to credit against the DWC all revenues received from energy generated by SWP conservation facilities but there has been an issue as to whether DWR has correctly credited such revenues to the DWC resulting in overcharges to Agency and City; and

**WHEREAS**, a claim has been filed on behalf of Agency with the DWR to address the contractual issues relating to the crediting of revenues generated by SWP and, depending on how DWR responds to the claim, Agency may commence litigation to enforce the terms of the contract; and

**WHEREAS**, the law firm of Kronick, Moskovitz, Tiedemann & Girard ("KMTG") currently represent Kern County and other water agencies which have the same interests as Agency and City and have a great deal of familiarity with the contractual issues between Agency and DWR; and

**WHEREAS**, the parties believe that it is in the best interest of Agency and City to amend the Agreement to authorize Agency to sign a Joint Representation Agreement with KMTG attached hereto as Exhibit "A-2", and incorporated by reference herein; and

**WHEREAS**, the participation in the Joint Representation Agreement will benefit the Agency and City through coordination of other water contractors in similar positions and a savings in any potential litigation costs by this coordinated effort;

**WHEREAS**, pursuant to the Agreement Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the Water Supply Contract with City including costs related to the joining of Joint Representation Agreement and any potential litigation result of ; and

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Agreement shall be modified, as Amendment No. 7, as follows:

1. Paragraph 18 is added to the Contract for Water Supply from North Bay Aqueduct between NCFCWCD and City of American Canyon to read as follows:

18. Joint Representation Agreement with Kronick, Moskovitz, Tiedemann & Girard and initiation of law suit against the California Department of Water Resources ("DWR") for breach of contract

(a) Agency shall sign a Joint Representation Agreement with Kronick, Moskovitz, Tiedemann & Girard in order to prosecute an action against DWR for failure of DWR to credit the full value of energy generated by certain conservation facilities against the Delta Water Charge as required by the Water Supply Contract between DWR and Agency.

(b) (i) City shall reimburse Agency for its proportionate share of costs incurred due to the prosecution of the lawsuit against DWR and costs associated with the Joint Representation Agreement including but not limited to litigation and expert costs, administrative costs, and potential costs under Code of Civil Procedure Section 1032.

These costs shall be apportioned among all member units directly proportional to their annual entitlements for each year.

(ii) City shall pay its share of the costs described in sub-paragraph not later than fifteen (15) days after receipt of Agency's invoices. Agency's invoices shall be in amounts sufficient to allow Agency to receive funds to pay City's proportionate share of Agency's current obligations of the Joint Representation Agreement no sooner than thirty (30) days prior to the date the same become due.

(d) Agency shall keep City informed of status of litigation and/ or settlement negotiations and shall enter into a settlement agreement only after each of the Member Units agree in writing to the settlement agreement. The Agency shall not execute any settlement agreement unless and until each Member Unit has provided Agency with written consent to the settlement agreement. Settlement proceeds shall be apportioned among all Member Units directly proportional to their annual entitlements for each year.

(e) Agency shall not withdraw from the Joint Representation Agreement without written authorization from each Member Units and after compliance with Paragraph 5 of the Joint Representation Agreement.

2. Agency and City acknowledge that it is the intent of the parties that the other Member Units within the service area of Agency under the State Water Supply Contract will also be amending their respective Water Supply Agreements with Agency in substantially the same manner as set forth above. For this reason, Amendment No. 7 of the Agreement shall be effective upon the date first above written or the date the last of the other Member Units has executed a similar amendment to its corresponding agreement, whichever is later.

3. Except as provided in (1) and (2), above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.7 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

**CITY OF AMERICAN CANYON**

**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By \_\_\_\_\_

Mayor

By Mike Rippey

MIKE RIPPEY

Chairperson of the Board

**ATTEST:**

**ATTEST:**

By \_\_\_\_\_

City Clerk

By Pamela Miller

PAMELA MILLER

District Secretary

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By \_\_\_\_\_

City Attorney

By Robert Westmeyer

ROBERT WESTMEYER

District Legal Counsel

**COUNTERSIGNED:**

By \_\_\_\_\_

Finance Director

APPROVED 12-7-09

FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

PAMELA A. MILLER

SECRETARY OF THE DISTRICT

By Sherry Valtierra Deputy

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.7 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

**CITY OF AMERICAN CANYON**

**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By Cecil Bruce Shaver  
Cecil Shaver  
Mayor

By \_\_\_\_\_  
MIKE RIPPEY  
Chairperson of the Board

**ATTEST:**

By Kay Woodson  
KAY WOODSON  
City Clerk

**ATTEST:**

By \_\_\_\_\_  
PAMELA MILLER  
District Secretary

**APPROVED AS TO FORM:**

By William D. Ross  
WILLIAM D. ROSS  
City Attorney

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
ROBERT WESTMEYER  
District Legal Counsel

**COUNTERSIGNED:**

By Elizabeth Wessman-McGee  
ELIZABETH WESSMAN-MC GEE  
Finance Director

EXHIBIT A-2

JOINT REPRESENTATION AGREEMENT

This Joint Representation Agreement ("Agreement") is entered into effective September 15, 2004, by and between Kronick, Moskovitz, Tiedemann & Girard ("KMTG") and the following entities (hereinafter referred to collectively as "Clients" and individually as "Client"):

Kern County Water Agency  
Alameda County Water District  
Alameda County Flood Control & Water Conservation District Zone 7  
City of Yuba City  
County of Butte  
County of Kings  
Dudley Ridge Water District  
Empire West Side Irrigation District  
Napa County Flood Control & Water Conservation District  
Oak Flat Water District  
Plumas County Flood Control & Water Conservation District  
Santa Clara Valley Water District  
Solano County Water Agency  
Tulare Lake Basin Water Storage District

(KMTG and Clients are collectively referred to hereinafter as "Parties.")

WHEREAS:

1. Clients have certain common interests in the resolution of disputes with, or prosecution of litigation against, the California Department of Water Resources ("DWR") under their separate water supply contracts ("Contracts") with DWR, arising out of DWR's failure to credit the full value of energy generated by certain conservation facilities as defined in said Contracts against the Delta Water Charge as defined in said Contracts.

2. Clients recognize that it is appropriate to present a joint legal position concerning the interpretation of these Contracts, whether DWR is in breach of same, and concerning the calculation of damages that have accrued to Clients separately under these Contracts. Clients believe that it is appropriate and cost-effective to jointly hire a single law firm to serve as lead



counsel in dealing with DWR, and to share in the legal and consultant fees to be incurred after the effective date of this Agreement.

3. KMTG has informally provided a preliminary litigation budget of \$1.1 million through trial, including \$400,000 in consultant fees. These figures are recognized as preliminary and subject to revision.

4. Clients recognize that KMTG has provided legal services already to Kern County Water Agency ("KCWA") concerning this dispute with DWR, and Clients desire to provide for KMTG's continued representation of KCWA without issues of conflicts of interest, and for the preservation of all applicable privileges including attorney-client privilege and attorney work product protection.

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Clients hereby jointly retain and engage KMTG to serve as lead counsel with respect to this matter. KMTG shall have the responsibility to prepare and file pleadings and briefs, and prepare and transmit correspondence with opposing counsel and the court. KMTG shall provide copies to Clients or co-counsel as designated by Clients.

2. While Clients acknowledge KMTG's position as lead counsel with respect to this matter, the Parties acknowledge that: (a) designated co-counsel for each individual Client shall be included as an attorney of record with the court in this matter, (b) designated co-counsel for each individual Client shall be notified of and be entitled to attend all hearings, court dates, settlement meetings and similar events regarding this matter, and (c) KMTG will provide designated co-counsel for each individual Client, to the extent reasonable, copies of all documents prior to filing with the court.

3. Clients hereby acknowledge that there is a prior attorney-client relationship between KMTG and KCWA with respect to this matter. Clients recognize that KCWA retains all rights and privileges arising from that relationship and further retains the right to control decisions in this litigation to the extent that those decisions affect KCWA more than other Parties. Clients agree that all prior advice and work product provided to KCWA by KMTG in connection with this matter shall remain protected by attorney-client privilege and work product doctrine and need not be disclosed to other Clients under this Agreement except with the consent of KCWA through its Board of Directors. KCWA has already retained an economic consulting firm to evaluate potential damages, which firm has already provided materials to KCWA which are also protected as attorney work product, and have been paid for by KCWA. The economic consulting firm will provide to KMTG a budget prior to undertaking any further work, which budget shall be shared with Clients before said work is undertaken. All of said work undertaken by said consulting firm after the effective date of this Agreement shall be paid for pursuant to this Agreement.

4. Clients, other than KCWA, acknowledge KMTG's disclosure herein of its existing relationship with KCWA, which creates the potential of conflicts of interest under subdivision (c)(1) of Rule 3-310 of the California Rules of Professional Conduct. Clients hereby waive said potential conflicts and represent and warrant that they will not assert this Agreement, or KMTG's joint representation of them pursuant to this Agreement, to be a basis to disqualify KMTG from representing KCWA in this matter or any future matter or proceeding before any court, board, agency or other tribunal.

5. Clients hereby agree that if, for any reason, a Client withdraws from this Agreement, it shall, in the interest of the other Clients, preserve and not waive all privileges, including attorney-client privilege and attorney work product, with respect to all documents and

communications hereunder. Clients further agree that if a Client withdraws from this Agreement, it shall remain obligated to pay its share of attorneys' and consultants' fees and costs incurred pursuant to this Agreement, up to and including the effective date of its withdrawal, including any fees or costs advanced on its behalf under paragraph 7. Clients shall retain the right to withdraw herefrom upon thirty (30) days' notice to the other Parties. Upon withdrawal, the withdrawing Client may elect to continue to be a part to the litigation contemplated by this Agreement, and shall represent its own interests in said litigation.

6. Subject to the rights of certain Clients to advance payment under paragraph 8, all attorneys' fees for the services of KMTG, all consultants' fees and other costs incurred by KMTG pursuant to this Agreement in connection with the dispute and the litigation shall be shared by Clients according to the following percentages:

66.2%	Kern County Water Agency
2.8%	Alameda County Water District
5.3%	Alameda County Flood Control & Water Conservation District Zone 7
.6%	City of Yuba City
1.8%	County of Butte
.6%	County of Kings
3.8%	Dudley Ridge Water District
.2%	Empire West Side Irrigation District
1.9%	Napa County Flood Control & Water Conservation District
.4%	Oak Flat Water District
.2%	Plumas County Flood Control & Water Conservation District
6.6%	Santa Clara Valley Water District
3.2%	Solano County Water Agency
6.4%	Tulare Lake Basin Water Storage District

7. In the event that any Client withdraws from this Agreement, that client's percentage contribution responsibility under paragraph 6 as to all fees and costs incurred after the effective date of the withdrawal will be shared by the non-withdrawing Clients in proportion to their percentage shares set forth in paragraph 6. By "proportion" in this context is meant the ratio of each Client's percentage to the aggregate of all percentages of all non-withdrawing Clients.

8. The following Clients, at their option, may have KCWA pay, by way of advance, their share of fees and costs incurred pursuant to this Agreement:

City of Yuba City  
County of Butte  
County of Kings  
Empire West Side Irrigation District  
Oak Flat Water District  
Plumas County Flood Control & Water Conservation District

To the extent of any advance payment by KCWA on behalf of any of these Clients, KCWA shall have a lien on any damages awarded to or settlement monies received by such Client. In addition, if any such Client recovers any prospective relief in the form of a change in calculation of its Delta Water Charge under its Contract for any year after 2003, KCWA shall be entitled to recover fees and costs advanced on behalf of such Client, and may enforce its right by separate lawsuit under this Agreement. In the event that any such Client does not recover damages or prospective relief, KCWA waives and releases such Client from any liability for fees or costs advanced by KCWA on behalf of said Client hereunder.

9. Clients agree that they will each separately seek contractual damages against DWR in the contemplated litigation. Clients acknowledge that since KMTG will seek a separate damage award on behalf of each of them, Clients do not contemplate that there will be a common pool of damages to be awarded to them jointly. In the event of a damage award or settlement payment to any single Client, no other Client shall have a lien or any other right to share in such award by virtue of its percentage contribution under paragraphs 6 or 7 above; provided that KCWA shall have a lien to the extent of moneys advanced by KCWA pursuant to paragraph 8 on behalf of the Client receiving the damage award or settlement. In the event of an award of costs separately against any Client as a result of the litigation, no other Client shall have any responsibility hereunder to share in the payment of such costs, except as provided in paragraph 10. In the event of an award of

costs against Clients jointly and severally, Clients shall contribute toward payment of such costs in accord with the percentages set forth in paragraph 7; provided that if a Client has withdrawn under paragraph 5, effective prior to the order awarding costs, it shall have no contribution responsibility, and the non-withdrawing Clients shall contribute in accord with the percentages as adjusted under paragraph 4; and further provided, that KCWA shall be liable for the contribution shares of indemnified Clients under paragraph 10.

10. KCWA separately agrees and covenants that it shall be liable for and shall indemnify the following Clients against liability to DWR for costs under Code of Civil Procedure Section 1032 and against liability under this Agreement for contribution to any award of costs to DWR:

City of Yuba City  
County of Butte  
County of Kings  
Empire West Side Irrigation District  
Oak Flat Water District  
Plumas County Flood Control & Water Conservation District

11. Monthly statements from KMTG, and all bills from consultants, shall be submitted directly to KCWA for payment. KCWA shall pay on behalf of the other Clients and then collect reimbursements from other clients. Clients, other than KCWA, shall reimburse KCWA within thirty (30) days after receipt of a reimbursement request unless a Client has arranged with KCWA for payment of its fees as set forth in paragraph 8 above. All statements and bills from KMTG and consultants shall be open to review by Clients and their representatives, subject to attorney/client privilege.

12. Clients agree that the attorney-client privilege and work product doctrine apply to all documents transmitted and communications exchanged between and among KMTG and

Clients, collectively or separately. To the maximum extent permitted by law, Clients agree to maintain all such privileges while this Agreement is in effect, and thereafter.

13. This Agreement may be executed in counterparts, which collectively shall comprise one and the same instrument.

Dated: October \_\_, 2004

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

By \_\_\_\_\_  
JAMES P. WIEZEL

Dated: October \_\_, 2004

KERN COUNTY WATER AGENCY

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: October \_\_, 2004

ALAMEDA COUNTY WATER DISTRICT

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: October \_\_, 2004

ALAMEDA COUNTY FLOOD CONTROL & WATER  
CONSERVATION DISTRICT ZONE 7

By \_\_\_\_\_  
Its \_\_\_\_\_

Clerk of the Board  
Dated: October \_\_, 2004

CITY OF YUBA CITY

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: October \_\_, 2004

COUNTY OF BUTTE

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

COUNTY OF KINGS

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

DUDLEY RIDGE WATER DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

EMPIRE WEST SIDE IRRIGATION DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: December 7, 2004

NAPA COUNTY FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
PAMELA MILLER,  
Clerk of the Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
ROBERT WESTMEYER, County Counsel

Dated: October \_\_, 2004

OAK FLAT WATER DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

PLUMAS COUNTY FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

SANTA CLARA VALLEY WATER DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

SOLANO COUNTY WATER AGENCY

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: October \_\_, 2004

TULARE LAKE BASIN WATER STORAGE DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_







**AMENDMENT NO. 8 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 8 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Agreement" is made as of this <sup>7<sup>th</sup></sup>~~19<sup>th</sup>~~ day of <sup>Nov</sup>~~September~~, 2006, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California Department of Water Resources ("DWR") that specifies the amount of water available to Agency for disbursement to its member units in any given year and a number of component charges for water allocated and delivered; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Agreement as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, and by Amendment No. 5 as of September 21, 2000, and by Amendment No. 6 as of December 7, 2004, and by Amendment No. 7 as of December 7, 2004 under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, DWR has contracts with Agency and other water agencies ("State Water Contractors") to deliver water from the State Water Contract ("SWP") where it calculates and assesses an annual charge to the State Water Contractors for water deliveries that includes as a component the Delta Water Charge ("DWC"); and

**WHEREAS**, pursuant to the terms of these contracts, DWR is required to credit against the DWC all revenues received from energy generated by SWP conservation facilities but there has been an issue as to whether DWR has correctly credited such revenues to the DWC resulting in overcharges to Agency and City; and

**WHEREAS**, a claim has been filed on behalf of Agency with the DWR to address the contractual issues relating to the crediting of revenues generated by SWP and, depending on how DWR responds to the claim, Agency may commence litigation to enforce the terms of the contract; and

**WHEREAS**, the law firm of Kronick, Moskovitz, Tiedemann & Girard ("Kronick") represented Kern County and other water agencies which have the same interests as Agency and City and have a great deal of familiarity with the contractual issues between Agency and DWR; and

**WHEREAS**, DWR has challenged the involvement of one specific attorney within the law firm of Kronick and the parties have executed a settlement agreement excluding the involvement of this specific attorney and establishing an "ethical screen" to allow other members of Kronick to continue working on the case, and

**WHEREAS**, the Agency and other State Water Contractors have elected to replace Kronick as the lead law firm on this case with Pillsbury Winthrop Shaw Pittman LLP (Pillsbury), and

**WHEREAS**, the parties believe that it is in the best interest of Agency and City to amend the Agreement to authorize Agency to sign a Joint Representation Agreement with Pillsbury, attached hereto as Exhibit A-3, and/or, following written notification by Agency to City, any other law firm chosen to represent the Agency and other State Water Contractors as this case moves forward, and incorporated by reference herein; and

**WHEREAS**, the participation in the Joint Representation Agreement will benefit the Agency and City through coordination of other water contractors in similar positions and a savings in any potential litigation costs by this coordinated effort; and

**WHEREAS**, pursuant to the Agreement Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the Agreement with City including costs related to the joining of Joint Representation Agreement and any potential litigation result of; and

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Agreement shall be modified, as Amendment No. 8, as follows:

1. Paragraph 18, which was added to the Contract for Water Supply from North Bay Aqueduct between Agency and City as part of Amendment No. 7, shall be deleted in its entirety and replaced with the following:

18. Joint Representation Agreement with Pillsbury Winthrop Shaw Pittman LLP and/or any other law firm chosen to represent the Agency and other State Water Contractors in the lawsuit against the California Department of Water Resources ("DWR") for breach of contract

(a) Agency shall sign a Joint Representation Agreement with Pillsbury Winthrop Shaw Pittman LLP and/or, following written notification to City, any other law firm chosen to represent the Agency and other State Water Contractors in order to prosecute an action against DWR for failure of DWR to credit the full value of energy generated by certain conservation facilities against the Delta Water Charge as required by the State Water Supply Agreement between DWR and Agency.

(b) (i) City shall reimburse Agency for its proportionate share of costs incurred due to the prosecution of the lawsuit against DWR and costs associated with the Joint Representation Agreement including but not limited to litigation and expert costs, administrative costs, and potential costs under Code of Civil Procedure Section 1032. These costs shall be apportioned among all member units directly proportional to their annual entitlements for each year.

(ii) City shall pay its share of the costs described in sub-paragraph (b) (i) not later than fifteen (15) days after receipt of Agency's invoices. Agency's invoices shall be in amounts sufficient to allow Agency to receive funds to pay City's proportionate share of Agency's current obligations of the Joint Representation Agreement no sooner than thirty (30) days prior to the date the same become due.

(d) Agency shall keep City informed of status of litigation and/ or settlement negotiations and shall enter into a settlement agreement only after each of the Member Units agree in writing to the settlement agreement. The Agency shall not execute any settlement agreement unless and until each Member Unit has provided Agency with written consent to the settlement agreement. Settlement proceeds shall be apportioned among all Member Units directly proportional to their annual entitlements for each year.

(e) Agency shall not withdraw from the Joint Representation Agreement without written authorization from each Member Units and after compliance with the Joint Representation Agreement.

2. Agency and City acknowledge that it is the intent of the parties that the other Member Units within the service area of Agency under the State Water Supply Agreement will also be amending their respective Agreements with Agency in substantially the same manner as set forth above. For this reason, Amendment No. 8 of the Agreement shall be effective upon the date first above written or the date the last of the other Member Units has executed a similar amendment to its corresponding Agreement, whichever is later.

3. Except as provided in (1) and (2), above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.8 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

**CITY OF AMERICAN CANYON**

**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By Cecil Bruce Shaver  
CECIL SHAVER  
Mayor

By Bill Dodd  
BILL DODD  
Chair of the Board

**ATTEST:**

By Kay Woodson  
KAY WOODSON  
City Clerk

**ATTEST:**

By Mary Jean McLaughlin  
District Secretary

**APPROVED AS TO FORM:**

By William D. Ross  
WILLIAM D. ROSS  
City Attorney

**APPROVED AS TO FORM:**

By Robert Westmeyer  
ROBERT WESTMEYER  
District Legal Counsel

**COUNTERSIGNED:**

By Susan Presto  
SUSAN PRESTO  
Interim Finance Director

APPROVED 11-7-00  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT

~~PAMELA A. MILLER~~  
SECRETARY OF THE DISTRICT

BY Sherry Patterson  
BY NCWCFCD NBA Attorney General Sherry Patterson







**AMENDMENT NO. 9 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 9 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Agreement" is made as of this 5<sup>th</sup> day of March, 2008, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California Department of Water Resources ("DWR") that specifies the amount of water available to Agency for disbursement to its member units in any given year and a number of component charges for water allocated and delivered; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Agreement as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, and by Amendment No. 5 as of September 21, 2000, and by Amendment No. 6 as of December 7, 2004, and by Amendment No. 7 as of December 7, 2004, and by Amendment No. 8 as of November 7, 2006 under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, Agency has an opportunity to participate in a long-term Dry Year Water Purchase Program being made available by the State of California Department of Water Resources (DWR) as part of what is formally known as the Yuba River Accord, and City is interested in obtaining additional Dry Year Water through this program:

**WHEREAS**, In 2008 and probably for several years to come, because of hydrologic conditions and/or regulatory constraints, the operation of the State Water Project ("SWP") by DWR and the operation of the Central Valley Project ("CVP") by the United States Bureau of Reclamation ("Reclamation") will likely result in less water being made available to the CVP contractors south of the Delta and the SWP contractors, including Agency, than required to meet the demands of their customers. In anticipation of such deficiencies, DWR is initiating a Dry Year Water Purchase Program to acquire water from voluntary sellers to augment the water supplies of certain CVP contractors south of the Delta, and the participating SWP Contractors, including Agency, and

**WHEREAS,** The parties believe that it is in the best interest of Agency and City to amend the Contract to authorize Agency to sign the "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to Napa County Flood Control and Water Conservation District under the Dry Year Water Purchase Program," also referred to herein as the Yuba River Accord Dry Year Purchase Program, attached hereto as Exhibit A, and

**WHEREAS,** Participation in the Yuba Accord Dry Year Water Purchase Program will provide additional water supplies to Agency and City to help off-set shortages caused by low SWP water allocations at a reasonable cost; and

**WHEREAS,** Pursuant to the NCFCWCD Agreement No. 423 Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the State Water Supply Agreement and NCFCWCD Agreement No. 423 with City, including costs related to participation in the Yuba River Accord Dry Year Water Purchase Program;

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Contract shall be modified, as Amendment No. 9, as follows:

1. Paragraph 19 is added to the Contract for Water Supply from North Bay Aqueduct between Agency and City as part of Amendment No. 9, as follows:

**"19. Participation in the Yuba River Accord Dry Year Water Purchase Program.**

(a) Agency shall sign an Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to Napa County Flood Control and Water Conservation District under the Dry Year Water Purchase Program (which may be referred to herein as the "Yuba River Accord Dry Year Purchase Program").

(b) Water made available to Agency under the Yuba River Accord Dry Year Water Purchase Program shall be apportioned among all participating member units directly proportional to their respective amounts of ultimate Table A (29,025 AF total for Napa County) annual entitlements. However, if all participating member units agree on a different method of allocating water made available to Agency under the Yuba River Accord Dry Year Purchase Program, then the Agency shall allocate this water in accordance with such agreement.

(c) (i) City shall reimburse Agency for its proportionate share of all costs incurred due to participation in the Yuba River Accord Dry Year Water Purchase Program including administrative costs. These costs shall be apportioned among all participating member units directly proportional to their respective amounts of ultimate Table A (29,025 AF total for Napa County) annual entitlements. If all participating member units agree on a different method of allocating water made available to Agency under the Yuba River Accord Dry Year Purchase Program, then costs shall be apportioned proportionally based on the amounts of water received by each member unit.

(ii) City shall pay its share of the costs described in sub-paragraph (b) (i) not later than fifteen (15) days after receipt of Agency's invoices. Agency's invoices shall be in amounts sufficient to allow Agency to receive funds to pay City's proportionate share of Agency's current obligations of the Yuba River Accord Dry Year Water Purchase Program no sooner than thirty (30) days prior to the date the same become due.

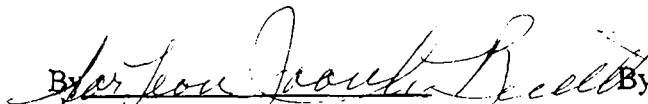
(d) Agency shall keep City regularly informed of the status of the Yuba River Accord Dry Year Purchase Program.

2. Except as provided in (1) above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended."

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.9 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.


CITY OF AMERICAN CANYON

NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT

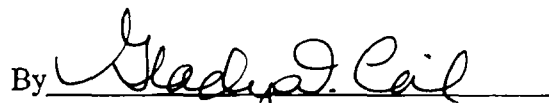
By   
LEON GARCIA  
Mayor

By   
BRAD WAGENKNECHT  
Chair of the Board

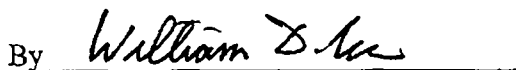
ATTEST:

By   
DOROTHY ROADMAN  
City Clerk

ATTEST:

By   
GLADYS I. COIL  
District Secretary

APPROVED AS TO FORM:

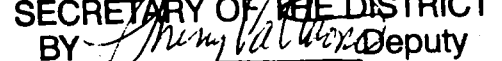
By   
WILLIAM D. ROSS  
City Attorney

APPROVED AS TO FORM:

By   
ROBERT WESTMEYER  
District Legal Counsel

COUNTERSIGNED:

By   
BARRY WHITLEY  
Finance Director

APPROVED 3-4-08  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT  
GLADYS I. COIL  
SECRETARY OF THE DISTRICT  
BY  Deputy

**STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES**

**AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER  
BY THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF CALIFORNIA  
TO THE PARTICIPATING STATE WATER PROJECT CONTRACTORS  
UNDER  
THE DRY YEAR WATER PURCHASE PROGRAM**

THIS AGREEMENT is entered into as of the 31<sup>st</sup> day of March, 2008, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the Department of Water Resources of the State of California, herein referred to as "DWR," and Napa County Flood Control and Water Conservation District, a public agency in the State of California, herein referred to as the "AGENCY." DWR and the AGENCY are herein referred to separately as the "Party" and collectively as the "Parties."

**RECITALS**

- A. In 2008 and probably for several years to come, because of hydrologic conditions and/or regulatory constraints, the operation of the State Water Project ("SWP") by DWR and the operation of the Central Valley Project ("CVP") by the United States Bureau of Reclamation ("Reclamation") may result in less water being made available to the south-of-Delta CVP water service contractors and the SWP contractors. In anticipation of such potential conditions, DWR is initiating a dry year

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
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water purchase program to acquire water from voluntary sellers to augment the water supplies.

- B. The Yuba County Water Agency ("Yuba") is engaged in the Yuba River Accord initiative ("Yuba River Accord") to resolve issues associated with operation of the Yuba Project in a way that protects lower Yuba River fisheries and local water-supply reliability, while providing revenues for local flood control projects, water to use for protection and restoration of Delta fisheries, and improvements in state-wide water supply management.
- C. The Yuba River Accord includes three major elements, all of which must be in place for the Yuba River Accord to become effective: (1) the Fisheries Agreement (dated November 3, 2007) to provide higher flows for fish in the lower Yuba River under certain conditions, (2) Conjunctive Use Agreements between Yuba and water districts within Yuba County for implementing a conjunctive use and water use efficiency program; and (3) the "Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources" (dated December 4, 2007) ("Yuba Water Purchase Agreement").
- D. DWR and Yuba entered into the Yuba Water Purchase Agreement as part of the Yuba River Accord to purchase specified Components of water for the benefit of the EWA, the SWP contractors, and the member agencies of the San Luis & Delta-Mendota Water Authority ("Authority") to resolve potential conflicts concerning the accounting for water that Yuba will release pursuant to the Fisheries Agreement.
- E. Reclamation determined to not be a party to the Yuba Water Purchase Agreement. Yuba and DWR will amend the Yuba Water Purchase Agreement at such time as

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
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Reclamation is willing to become a party thereto, subject to Reclamation and DWR entering into a separate agreement for the allocation of, and payment for, water under the Yuba Water Purchase Agreement.

- F. Consistent with the Yuba Water Purchase Agreement, when Yuba makes water available to DWR under the Yuba River Accord for benefit of the SWP contractors and the Authority, DWR intends to offer the water under the dry year water purchase program to the Participating SWP Contractors and to the Authority as set forth herein.
- G. The SWP contractors and the Authority invested significant resources to assist DWR and Yuba with the development of the Yuba River Accord, the Yuba Water Purchase Agreement, and supporting documentation.
- H. The Parties desire to enter into this water supply and conveyance agreement whereby DWR will purchase water under the Yuba River Accord for the dry year water purchase program to make available for purchase by the SWP contractors, including the AGENCY, and the Authority.

## AGREEMENT

**Now Therefore**, in accordance with the Recitals and in consideration of the terms and conditions herein, the Parties agree to the following:

### 1. DEFINITIONS

When used in this Agreement, the following definitions will apply:

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
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**"Balanced Conditions"** means the hydrologic condition of the Delta as defined in the November 24, 1986 "Agreement between the United States of America and the State of California for Coordinated Operations of the Central Valley Project and the State Water Project."

**"Banks Pumping Plant"** means a SWP facility in the south Delta owned and operated by DWR.

**"CALFED"** means the joint federal and California program intended to develop and implement a long-term comprehensive plan that will, among other purposes, restore ecological health of the Bay-Delta System and improve water project management.

**"Carriage Water"** means the water losses due to increased Delta outflow necessary to maintain baseline Delta salinity conditions as determined by DWR, that are associated with Delivered Transfer Water or Stored Released Transfer Water that is exported by CVP or SWP Delta pumping facilities.

**"Component 1 Water"** means the water supplies available to DWR pursuant to Section 5 of the Yuba Water Purchase Agreement.

**"Component 2 Water"** means the water supplies available to DWR pursuant to Section 6 of the Yuba Water Purchase Agreement.



**"Component 3 Water"** means the water supplies available to DWR pursuant to Section 7 of the Yuba Water Purchase Agreement.

**"Component 4 Water"** means the water supplies available to DWR pursuant to Section 8 of the Yuba Water Purchase Agreement.

**"Conference Year"** means a Water Year for which the North Yuba Index is less than 500,000 acre-feet, calculated according to the procedures and formulas set forth in Exhibits 4 and 5 of the Fisheries Agreement, and using the latest available forecasts for the Water Year.

**"Delivered Transfer Water"** means Released Transfer Water from Yuba that is accounted as being exported by the SWP and the CVP, or contributing to exports, as described in Section 5 of Exhibit 1 of the Yuba Water Purchase Agreement.

**"EWA"** means the Environmental Water Account program described in the CALFED Record of Decision and the EWA Operating Principles Agreement (August 28, 2000, as extended in September 2004), as extended by amendment and supplemental approvals, or a long-term environmental water account program.

**"Fisheries Agreement"** means the agreement among Yuba, the California Department of Fish and Game, and other parties, which is part of the Yuba River

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Accord, and under which Yuba operates the Yuba Project to provide higher flows in the lower Yuba River under certain conditions to improve fisheries protection.

**"Final Classification"** means the year-type classification for the Sacramento River region in the May issue of DWR's Bulletin 120.

**"Management Committee"** means the committee, consisting of one representative each from Yuba, DWR, Reclamation, the CALFED fishery agencies on behalf of EWA, SWP contractors, and the Authority, established under Section 14 ("Technical Committee and Management Committee") of the Yuba Water Purchase Agreement.

**"Participating SWP Contractors"** means all SWP contractors that have executed an "Agreement for the Supply and Conveyance of Water By the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program" on or before April 1, 2008.

**"Purchased Water"** means the supply of Component 1 Water that is not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that has been delivered by Yuba to DWR that is accounted for as Delivered Transfer Water in the manner set forth in Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement and made available for the dry year water purchase program. Purchased Water

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includes Carriage Water or water used as Delta outflow when the Export/Inflow ratio is controlling in the time period of July 1 to January 31.

**"SWP Long-Term Water Supply Contract"** means the long-term water supply contract between the Parties, as amended.

**"Technical Committee"** means the committee, consisting of technical representatives from Yuba, DWR, Reclamation, the CALFED fishery agencies on behalf of EWA, SWP contractors, and the San Luis & Delta-Mendota Water Authority, established under Section 14 ("Technical Committee and Management Committee") of the Yuba Water Purchase Agreement.

**"Water Accounting Year"** means the twelve-month period commencing January 1 through December 31.

**"Water Year"** means the twelve-month period from October 1 of one year through September 30 of the following year. For this Agreement, each Water Year will be classified: (1) as "Wet," "Above-Normal," "Below-Normal," "Dry" or "Critical," based on the Sacramento Valley Water Year Hydrologic Classification in Figure 1 on page 188 of the State Water Resources Control Board's March 15, 2000, Revised Water-Right Decision 1641; or (2) as a "Conference Year."

**"Yuba Project"** means the Yuba River Development Project, including New  
Bullards Bar Dam and Reservoir on the North Yuba River.

**"Yuba River Accord"** means Yuba's initiative as described in Recitals B and C of  
this Agreement.

**"Yuba Water Purchase Agreement"** means the Agreement for the Long-Term  
Purchase of Water from Yuba County Water Agency by the Department of Water  
Resources, which is attached hereto as Exhibit A.

## **2. TERM OF AGREEMENT**

A. This Agreement will become effective upon execution by the Parties and will  
terminate on December 31, 2025, provided, however, the Parties may  
terminate this Agreement on December 31, 2015, if the Parties fail to amend  
this Agreement pursuant to Section 3.B.5 below and as necessary to address  
amendments made to the Yuba Water Purchase Agreement regarding the  
quantity and pricing of water pursuant to Section 15 thereof; provided further  
that this Agreement shall remain in effect beyond the termination dates set forth  
above to the extent required to enable the parties to satisfy all obligations then  
existing or outstanding.

**3. PURCHASED WATER**

**A. METHODS FOR ESTABLISHING ALLOCATIONS AND SHARING OF WATER**

1. DWR will make available to the Participating SWP Contractors, as a group, fifty percent of the following types of water: Component 1 Water that is not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water.
2. If the AGENCY does not take some or all of the water made available to it pursuant to Section 3.A.1, then DWR will make the water not taken by the AGENCY available first to the other Participating SWP Contractors pursuant to 3.A.4 and then to the Authority pursuant to Section 3.A.5; provided, that the AGENCY will purchase all Delivered Transfer Water DWR is required to purchase from Yuba and that is made available to the AGENCY pursuant to Sections 3.A.1. through 3.A.4 if said water is not purchased by the Participating SWP Contractors or the Authority.
3. DWR will make available to the Participating SWP Contractors and the Participating SWP Contractors may accept and purchase Component 1 Water that is not used by EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that is made available to the Authority, if the Authority elects to not take said water.
4. All water made available to the Participating SWP Contractors pursuant to Sections 3.A.1 through 3.A.3 shall be allocated among the Participating SWP Contractors as follows:

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- a) DWR will allocate to the AGENCY its share of Water that is made available to the Participating SWP Contractors under Sections 3.A.1 through 3.A.3 above based on the AGENCY'S maximum Table A amount in its SWP Long-Term Water Supply Contract as a proportion of the total Table A amounts provided under the Long-Term Water Supply Contracts of the Participating SWP Contractors.
  - b) If any Participating SWP Contractor does not request some or any of its share of the water made available pursuant to Section 3.A.3.a above, the remaining Participating SWP Contractors will have the first right to that water, and DWR will allocate that water among the remaining Participating SWP Contractors, but excluding from the calculation the maximum Table A amount of the Participating SWP Contractor(s) not requesting their full allocation. This process will repeat until all water made available pursuant to this Section 3.A.3 is allocated or no Participating SWP Contractor requests the remaining water made available.
5. DWR will offer to the Authority any Component 1 Water that is not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water made available pursuant to this Section and remaining unrequested after completing the allocation processes set forth above in Sections 3.A.4.

**B. TYPES AND PRICES OF PURCHASED WATER**

The AGENCY shall pay for Delivered Transfer Water made available to and accepted by the AGENCY under section 3.A above in accordance with the following sections:

**1. COMPONENT 1 WATER**

- a) While the EWA is in effect, if the EWA does not use all of the Component 1 Water, Component 1 Water unused by the EWA will be allocated and made available by DWR to the AGENCY pursuant to Section 3.A above. The AGENCY will pay for Component 1 Water that is made available to it and accounted for as Purchased Water at the same price per acre-foot as Component 4 Water.
- b) If EWA terminates and Yuba remains obligated to provide Component 1 Water, the Parties agree that Component 1 Water remaining to be delivered under the Yuba Water Purchase Agreement will be managed annually, as follows: (1) Component 1 Water in any year will be used to enhance water supply reliability of the Delta export facilities by off-setting new mandatory restrictions imposed on the CVP and SWP, including those being imposed by the federal court order in *NRDC v. Kemphorne*, or through a subsequent biological opinion for the conservation or protection of fish, and (2) if any Component 1 Water remains after off-setting the restrictions set forth in subsection (1) above, then the remaining Component 1 Water will be used as determined by DWR in close coordination with the California Department of Fish and Game

consistent with the water supply reliability project requirements of the  
funding source from which this water was purchased (Chapter 7(d) of  
Proposition 50, California Water Code Section 79550(d)).

2. COMPONENT 2 WATER

- a) For Component 2 Water that is accounted for as Purchased Water and made available in a Water Year that has a Final Classification as Dry, the AGENCY will pay \$75.00 per acre-foot.
- b) For Component 2 Water that is accounted for as Purchased Water and made available in a Water Year that has a Final Classification as Critical, the AGENCY will pay \$93.75 per acre-foot.

3. COMPONENT 3 WATER

For Component 3 Water that is accounted for as Purchased Water and made available to the AGENCY, the AGENCY will pay:

- a. \$25.00 per acre-foot in a Wet Year;
- b. \$50.00 per acre-foot in an Above-Normal Year;
- c. \$75.00 per acre-foot in a Below-Normal Year;
- d. \$100.00 per acre-foot in a Dry Year;
- e. \$125.00 per acre-foot in a Critical Year.

4. COMPONENT 4 WATER

For Component 4 Water that is accounted for as Purchased Water and made available to the AGENCY, the AGENCY will pay:

- a. \$25.00 per acre-foot in a Wet Year;
- b. \$50.00 per acre-foot in an Above-Normal Year;



- c. \$75.00 per acre-foot in a Below-Normal Year;
- d. \$100.00 per acre-foot in a Dry Year;
- e. \$125.00 per acre-foot in a Critical Year.

5. POSSIBLE FUTURE ADJUSTMENTS TO QUANTITIES AND PRICES.

If the provisions of Section 15 of the Yuba Water Purchase Agreement require changes to the quantity or pricing of water available therein, the Parties agree that amendment of this agreement for such purposes will be a condition precedent of any amendment of the Yuba Water Purchase Agreement pursuant to Section 15 thereof. The Parties agree to meet and confer and negotiate in good faith potential changes to this Agreement.

6. UNCOMMITTED WATER

- a. If Yuba notifies DWR of the availability of uncommitted Delivered Transfer Water prior to accounting for the water in the Holding Account, as set forth in Section 7.4 of Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement, DWR will notify the AGENCY, the Participating SWP Contractors, and the Authority of the availability of such water by September 30 of that year. Such water will be offered to the Participating SWP Contractors and to the Authority consistent with Section 3.A.
  - i. Within 30 days of such notice, the AGENCY will notify DWR of its request for an amount of the uncommitted water that it will purchase, if any.

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- ii. The amount of this water actually purchased by the AGENCY, the Participating SWP Contractors, and the Authority will be based on requests for this water by the AGENCY, the Participating SWP Contractors, and the Authority, and will not exceed the amount of water made available by Yuba. The Purchased Water that DWR will allocate to the AGENCY will be the lesser of the amount of water requested by the AGENCY or the amount allocated to the AGENCY in the manner set forth in Section 3.A above.
  - iii. The AGENCY will pay DWR the applicable purchase price for the water determined by the Water Year in which the water is accounted for as Delivered Transfer Water at prices set forth in Section 3.B above.
- b. If Yuba has credited uncommitted Delivered Transfer Water to the Holding Account as set forth in Section 7.4 of Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement and the water remains in storage until the subsequent Water Accounting Year, then DWR will offer the water in the Holding Account to the Participating SWP Contractors and the Authority consistent with Section 3.A.
- i. In the year that the AGENCY elects to take water from the Holding Account, that water will be credited toward the AGENCY's prorata share of the Component 3 Water with any additional deliveries credited as Component 4 Water that is accounted for as Purchased Water for the AGENCY.

- ii. The AGENCY will pay DWR the applicable purchase price for the water determined by the Water Year in which the water was accounted for as Delivered Transfer Water as set forth in Exhibit 1 of the Yuba Water Purchase Agreement and at prices set forth in Section 3.B above.

#### 4. REQUESTS, SCHEDULING AND CONVEYANCE

Scheduling and conveyance is subject to DWR's determination of conveyance capacity in SWP facilities. Scheduling and conveyance will be dependent on releases by Yuba, including the flow schedule for the lower Yuba River as provided for in the Fisheries Agreement, the North Yuba Index or the Yuba River Index, capacity of CVP and SWP facilities, and Bay-Delta conditions. In order to meet the goals of Section 6, the Parties may modify in writing the dates established in this Section 4 without amending this Agreement.

##### A. Requests and Scheduling

1. On or before April 11 of each Water Accounting Year, DWR will inform the AGENCY of the potential quantity of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that is available to the Agency.
2. On or about April 11 of each Water Accounting Year, or as soon thereafter as practicable, the AGENCY will submit an initial request to DWR for delivery of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water and an initial monthly schedule for delivery of the requested water.

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That initial monthly schedule will include the quantity of each component of water the AGENCY would like to purchase from DWR.

3. DWR and the AGENCY will, between April 11 and May 19, confer on the allocation of water under Section 3A.
4. Within 5 business days of notice from DWR that there has been a change in the amount of water available, but no later than May 19, the AGENCY will provide DWR with its modified request for each component of water.
5. No later than May 19, DWR will notify the AGENCY of the quantity of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that has been allocated to the Agency and that the AGENCY will schedule pursuant to Section 4.A.7 below.
6. The Parties recognize that no later than May 15 DWR must notify Yuba of the quantity of Component 4 Water that DWR will purchase from Yuba.
7. On or about May 20 of each Water Accounting Year, or as soon thereafter as practicable, the AGENCY and DWR will agree upon a final monthly schedule for delivery of Component 1 Water if not used by the EWA as provided in Section 3.B.1.a, Component 2 Water, Component 3 Water, and Component 4 Water that has been allocated to the Agency. The final schedule will be updated to accommodate any changes that affect the delivery of water as provided in Section 9 ("Scheduling of Water") of the Yuba Water Purchase Agreement. The final monthly schedule will include, pursuant to Section 3.A above, the quantity of each component of

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Purchased Water the AGENCY will purchase and that the AGENCY requests be delivered each month of the Water Accounting Year.

8. The final monthly schedule may be modified by mutual agreement. The AGENCY will submit copies of any proposed modifications to the final monthly schedule to DWR's State Water Project Analysis Office (SWPAO) Chief of Water Supply and Transfers Branch, and Chief of Water Deliveries Section, both at FAX number (916) 653-9628. SWPAO will coordinate with the DWR Operations Control Office in determining whether the proposed modifications to the final monthly schedule can be accommodated by DWR.
  9. After DWR approves the final monthly schedule, during any week when DWR is conveying water for the AGENCY, the AGENCY will submit weekly schedules to the DWR Operations Control Office: one to the Chief, Pre-Scheduling Section, FAX (916) 574-2782, and one to the Chief, Operations Scheduling Section, FAX (916) 574-2785. The weekly schedules will be consistent with the final monthly schedule.
  10. The scheduling of Purchased Water, and any adjustments to the schedule, will be in accordance with the Exhibit 1 ("Scheduling and Accounting Principles") of the Yuba Water Purchase Agreement.
  11. DWR's approval of the schedule will be subject to Section 4.B, below.
- B. Conveyance
- The conveyance of water under this Agreement to the AGENCY's delivery structures from the SWP facilities is subject to the terms and conditions of this Agreement, Article 55 of the AGENCY's Water Supply Contract, and applicable

laws. Use of Purchased Water under this Agreement shall be restricted to the service area of the SWP. Delivery priorities shall be determined in accordance with Article 12(f) of the AGENCY's SWP Long-Term Water Supply Contract, with Purchased Water being classified as non-project water.

**5. INVOICING AND PAYMENTS**

DWR will invoice the AGENCY and the AGENCY will submit payment to DWR based on each invoice as provided below.

**A. INVOICING AND PAYMENT OF PURCHASED WATER**

1. On or after June 10 (or within 9 days of the date that DWR receives an invoice from Yuba), DWR will invoice the AGENCY for fifty percent of the payment for the estimated amount of water that the AGENCY scheduled as Purchased Water for that calendar year minus fifty percent of any credits due to the AGENCY as provided in Section 5.C below.
2. On January 17 of the next calendar year (or within 9 days of the date that DWR receives an invoice from Yuba), DWR will invoice the AGENCY for the remaining unpaid cost for Purchased Water, including Purchased Water available pursuant to Section 3.B.6, above, purchased by the AGENCY minus the remaining credits due to the AGENCY as provided in Section 6.C below.
3. Invoices will itemize any prior payments and credits, the total due, less any additional credits.

B. INVOICE FOR CONVEYANCE, DELIVERY, ADMINISTRATIVE COSTS

1. DWR will invoice the AGENCY monthly for conveyance charges in accordance with Article 55 of the SWP Long-Term Water Supply contract. Specifically, the AGENCY shall pay the power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the conveyance of such water from the Delta for the year in which the Purchased Water is conveyed.
2. Upon execution, DWR will invoice the AGENCY a one-time administrative fee of \$3,000 for preparation of this Agreement.

C. PAYMENT FOR FIXED ANNUAL COSTS AND CREDIT AGAINST  
PURCHASED WATER.

1. On or before February 11, or within 10 days of DWR's receipt of Yuba's invoice, each year DWR will invoice the AGENCY its share of Yuba's fixed annual costs as provided in Section 12.B of the Yuba Water Purchase Agreement. The AGENCY's payment of these fixed annual costs will be its share of up to \$125,000 prorated among the Participating SWP Contractors calculated in the manner as provided in Section 3.A of this Agreement.
2. As provided in Section 5.A above, for all payments made by the AGENCY under this Subsection, DWR will provide to the AGENCY a credit against future payments due to DWR for Purchased Water, excluding Component 1 Water. If necessary, DWR will record and accrue these credits from year to year until DWR makes Purchased Water, excluding Component 1 Water,

available to the AGENCY, at which time such credits will be applied toward payments due.

D. PAYMENTS FOR YUBA DIESEL CONVERSION OF GROUNDWATER PUMPS.

Within 30 days of DWR's receipt of a reviewed and verified invoice from Yuba of its conversion of pumps from diesel as provided under Section 12.A of the Yuba Water Purchase Agreement, DWR will invoice the AGENCY for up to one-half of the amount of the Yuba invoice. The AGENCY's share of Yuba's total costs for diesel conversion will not be more than its share of \$500,000 prorated among the Participating SWP Contractors calculated in the manner as provided in Section 3.A of this Agreement.

E. PAYMENTS FOR ADJUSTMENTS TO GROUNDWATER O&M COSTS.

In accordance with the timing of invoices required by Section 5.A above, DWR will invoice the AGENCY for its share of Yuba's costs for any annual increases above actual 2006 Groundwater O&M Costs, as provided in Section 12.C of the Yuba Water Purchase Agreement. The AGENCY's share of Yuba's costs will be based upon the proportion of the total amount of Purchased Water delivered to the AGENCY to the total amount of water delivered to the Participating SWP Contractors and the Authority in the year that the invoice covers. If no Purchased Water is delivered in the year that the invoice covers, the Participating SWP Contractors and the Authority shall share equally the costs invoiced by Yuba to DWR and AGENCY will pay its share, which share shall be calculated in the manner as provided in Section 3.A of this Agreement.



F. PAYMENTS FOR COSTS ATTRIBUTABLE TO YUBA WATER PURCHASE  
AGREEMENT

The Parties agree that costs that DWR is obligated to pay to Yuba pursuant to the Yuba Water Purchase Agreement as attached hereto and that have not been identified by this Agreement, will be an obligation of the Participating SWP Contractors and the Authority. If necessary, the Parties will amend this Agreement to provide for invoicing and payment of such costs if not provided for herein.

G. TIMING OF PAYMENTS.

1. The AGENCY will pay DWR within 32 days after the AGENCY's receipt of an invoice from DWR.
2. Payment made after 32 days of receipt of invoice will be considered delinquent and interest will accrue at a rate of one percent per month for all delinquencies from the due date until paid.
3. If the AGENCY disputes a cost on an invoice, the AGENCY will make payment based on the invoice received, but will submit a notice to DWR identifying the disputed cost within 60 days of receipt of the invoice. Within 21 days after DWR receives notice of the disputed cost, the Parties will meet and confer, and if appropriate, obtain assistance from the Technical Committee and Management Committee to resolve the error or discrepancy. If the Parties resolve the dispute in a manner that recognizes a payment by the AGENCY that exceeds what is required under this Agreement, the amount of the excessive payment will be reflected by DWR pursuant to

Section 6.A as a credit against future payments due from the AGENCY.

DWR will reflect the credit on the next subsequent invoice it provides to the AGENCY. If the Parties cannot resolve the dispute, they will follow the dispute resolution process described in Section 10 below.

**6. EFFORTS TO MAXIMIZE THE BENEFICIAL USE OF WATER**

DWR will use all reasonable efforts to maximize the amount of Purchased Water available to the Participating SWP Contractors, including the AGENCY, and the Authority. Those efforts will include, but are not limited to fully exercising its rights and obligations under the Yuba Water Purchase Agreement, coordinating with Reclamation on the operations of the SWP and CVP, and storing water in SWP facilities when Delta pumping is constrained, as provided in Section 4.3 of Exhibit 1 to the Yuba Water Purchase Agreement.

**7. MEMBERSHIP ON COMMITTEES**

DWR agrees that a representative of the Participating SWP Contractors will be a member of the Management Committee and Technical Committee.

**8. CONFERENCE YEAR PRINCIPLES**

During any Conference Year, the Parties will meet with Yuba and the other parties to the Fisheries Agreement and the Conjunctive Use Agreements to: (1) determine how to address the circumstances, and (2) discuss the operation of the Yuba Project during that Water Accounting Year. During a Conference Year, if Yuba

reduces or does not deliver any Component 2, 3, or 4 Water, the AGENCY's and the Participating SWP Contractors' obligation to schedule or purchase any quantity of Purchased Water will be reduced or eliminated accordingly.

9. LIABILITY

- A. DWR will not assert that the AGENCY, its directors, officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by DWR, its Director, officers, agents or employees, related to DWR's performance of this Agreement, where such liability is caused by an act, error or omission of DWR, its Director, officers, agents or employees.
- B. The AGENCY will not assert that DWR, its Director, officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by the AGENCY, its directors, officers, agents or employees, related to the AGENCY's performance of this Agreement, where such liability is caused by an act, error or omission of the AGENCY, its director, officers, agents or employees.
- C. To the extent permitted by California law, the AGENCY will indemnify, defend and hold DWR, its Director, officers, agents and its employees safe and harmless from any and all, claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorney's fees paralegal fees, consultant fees, engineering fees, expert fees, and any other professional fees) that arise from or are related in any way to the AGENCY's activities or performance under this Agreement that

are under the exclusive control of the AGENCY, including but not limited to the release, conveyance, use or distribution of water by the AGENCY for purposes of this Agreement.

- D. To the extent permitted by California law, DWR will indemnify, defend and hold the AGENCY, its directors, officers, agents and its employees safe and harmless from any and all, claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorney's fees, paralegal fees, consultant fees, engineering fees, expert fees, and any other professional fees) that arise from or are related in any way to DWR's activities or performance under this Agreement that are under the exclusive control of DWR, including but not limited to the release, conveyance, use or distribution of water by DWR for purposes of this Agreement.

#### 10. DISPUTE RESOLUTION

- A. Should any material disputes arise concerning any provision of this Agreement, or the rights and obligations of the Parties hereunder, including those involving possible termination or those that might cause the initiation of any administrative or judicial proceeding to enforce or interpret this Agreement, the Party that believes a dispute exists will notify the other Party, and the Parties will promptly meet and confer to attempt to resolve the perceived dispute.
- B. If the Process described in the preceding subsection fails to resolve the dispute within thirty days, the Parties will submit the dispute to a mediator who has

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
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experience in water-related disputes. The costs of any such mediation will be borne equally by the Parties. Initiation of this mediation process will be through written notice by one Party to the other Party. The Parties reserve all of their other remedies that may be provided by law or equity in the event that such mediation fails to resolve a dispute. The Parties, in consultation with the mediator, will use their best efforts to resolve the dispute within thirty days. Under no circumstances, however, will mediation under this Section result in a requirement that diminishes, limits or contravenes the discretion, authority or any delegated authority of the Director of DWR or the AGENCY under State law.

- C. If mediation fails to resolve the dispute, and prior to commencing any legal action to resolve the dispute, the Party proposing to commence legal action will provide the other Party thirty days' written notice of such action, provided that such notice will not be required where a delay in commencing an action would prejudice the interests of the Party that intends to file suit. During the thirty-day notice period, the Parties will continue to attempt to resolve the dispute.

**11. NOT A PRECEDENT**

The terms and conditions set forth in this Agreement are not intended to set a precedent for any future contractual arrangements for conveying non-SWP water by DWR to the AGENCY.

**12. PAYMENTS, NOTICES OR OTHER COMMUNICATIONS**

The time for providing any payments, notices, or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement. All payments, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (a) served personally on the Party to whom notice is to be given; (b) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (c) on the third day after mailing, if mailed to the Party to whom payment, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Mr. Carl A. Torgersen  
Chief of State Water Project Operations Office  
Department of Water Resources  
3310 El Camino Avenue  
Post Office Box 219000  
Sacramento, California 95821-9000,

And

Mr. Robert Cook  
Chief of State Water Project Analysis Office  
Department of Water Resources  
1416 Ninth Street, Room 1620  
Post Office Box 942836  
Sacramento, California 94236-0001

AGENCY: Mr. Robert J. Peterson, District Engineer  
Napa County Flood Control and Water Conservation District  
1195 Third Street, Suite 201  
Napa, CA 94559  
(707) 253-4351

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS  
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And

Mr. Felix Riesenber, Principal Water Resources Engineer  
Napa County Flood Control and Water Conservation District  
1195 Third Street, Suite 201  
Napa, CA 94559  
(707) 259-8620

A Party may notify the other Party in writing of a change in its designated representatives, without requiring an amendment to this Agreement. Unless other timing is specified within this Agreement, DWR will provide to the AGENCY copies of any and all payments, notices or other communications it sends or receives pursuant to the terms of the Yuba Water Purchase Agreement as soon as possible, but no later than 14 days after DWR receives, or sends, such payments, notices or other communications to Yuba and/or the Authority and/or other Participating SWP Contractors.

**13. SIGNATORIES' AUTHORITY**

The signatories to this Agreement represent that they have authority to execute this Agreement and to bind the Party on whose behalf they execute this Agreement.

**14. COUNTERPARTS OF THIS AGREEMENT**

This Agreement may be signed in any number of counterparts by the Parties, each of which will be deemed to be an original, and all of which together will be deemed to one and the same instrument. This Agreement, if executed in counterparts, will be valid and binding on a Party as if fully executed all in one copy.

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
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Authority under its "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program."

- C. Prior to any amendment of any "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program", DWR will meet and confer with the AGENCY. DWR will not agree to any amendments to any "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program" or the "Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority under the Dry Year Water Purchase Program" that would adversely affect the rights and obligations under this Agreement.
- D. DWR will meet and confer with the AGENCY, the other Participating SWP Contractors and the Authority before agreeing to any proposed changes, amendments, or supplements to the Yuba Water Purchase Agreement. DWR will not agree to any changes, amendments, or supplements to the Yuba Water Purchase Agreement or its Exhibits that would be inconsistent with or adversely affect the Parties' rights and obligations under this Agreement, any other "Agreement for the Supply and Conveyance of Water By the Department of Water Resources of the State of California to the Participating SWP Contractors Under the Dry Year Water Purchase Program" or under the



"Agreement for the Supply and Conveyance of Water by the Department of  
Water Resources of the State of California to the San Luis & Delta-Mendota  
Water Authority under the Dry Year Water Purchase Program."

**18. OPINIONS AND DETERMINATIONS**

Where the terms of this Agreement provide for action to be based upon the  
opinion, determination, approval or review of either Party, such terms are not  
intended to be, and will not be construed as permitting such actions to be arbitrary,  
capricious or unreasonable. Any opinion, determination, approval or review  
required of a Party under this Agreement will be provided in a timely manner.

**19. REASONABLE COOPERATION**

The Parties will reasonably cooperate with each other, including the execution of  
all necessary documents and providing assistance in obtaining approvals and  
permits from regulatory agencies required to perform the obligations under this  
Agreement and to carry out the purpose and intent of this Agreement.

**20. CONSTRUCTION AND INTERPRETATION**

This Agreement is entered into freely and voluntarily. This Agreement has been  
arrived at through negotiation, and each Party has had a full and fair opportunity to  
revise the terms of this Agreement. Consequently, the normal rule of construction  
that any ambiguities are to be resolved against the drafting party will not apply in  
construing or interpreting this Agreement.

**21. COMPLETE CONTRACT**

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.

**22. DETERMINATION OF UNENFORCEABLE PROVISIONS**

If any term or provision of this Agreement is deemed invalid or unenforceable by any court of final jurisdiction, the Parties will meet and attempt to address this situation pursuant to the provisions of Section 10 of this Agreement.

**23. WAIVER**

The waiver at any time by a Party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any other default or matter.

**24. TIME**

Time is of the essence in this Agreement. Any date specified in this Agreement may be changed with the written consent of the Parties.

**25. APPLICABLE LAW**

This Agreement will be construed under and will be deemed to be governed by the laws of the State of California.

**26. VENUE**

Any appropriate County under California law will be venue for any state court litigation concerning the enforcement or interpretation of this Agreement.

**27. REMEDIES NOT EXCLUSIVE**

The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by the Party of any remedy under this Agreement will be without prejudice to the enforcement of any other remedy.

**28. OFFICIALS NOT TO BENEFIT**

No member or delegate to Congress, Resident Commissioner, or Federal or State official will be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

**29. STANDARD CLAUSES**

With respect to the mutual obligations of the Parties under this Agreement, the Parties will comply with the Standard Clauses as shown on Exhibit B ("State of California Standard Clauses") to this Agreement for the State of California, Contracts with Public Entities.

**30. EXHIBITS INCORPORATED**

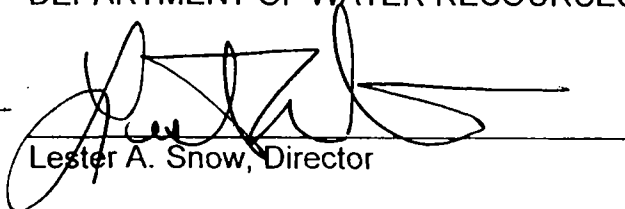
Each exhibit to which reference is made is deemed incorporated in this Agreement,  
whether or not actually attached.

**IN WITNESS WHEREOF**, the Parties hereto, by their authorized representatives, have  
executed this Agreement on the last date set forth below.

Approved as to legal form  
and sufficiency:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

  
Chief Counsel

  
Lester A. Snow, Director

3/28/08  
Date

3/31/08  
Date

Approved as to legal form  
and sufficiency:

AGENCY

Krishan Chopra, Deputy (by e-signature)  
County Counsel

  
Brad Wagenknecht, Chairperson

2/22/08  
Date

3-4-08  
Date

AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE DEPARTMENT OF WATER  
RESOURCES OF THE STATE OF CALIFORNIA TO PARTICIPATING STATE WATER PROJECT CONTRACTORS  
UNDER THE DRY YEAR WATER PURCHASE PROGRAM

Attachments:

Exhibit A: Agreement for the Long-Term Purchase of Water from Yuba County Water Agency by the Department of Water Resources (December 4, 2007)

Exhibit B: DWR Standard Clauses









**AMENDMENT NO. 10 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 10 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Agreement" is made as of this 5th day of April, 2008, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California Department of Water Resources ("DWR") that specifies the amount of water available to Agency for disbursement to its member units in any given year and a number of component charges for water allocated and delivered; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Agreement as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, and by Amendment No. 5 as of September 21, 2000, and by Amendment No. 6 as of December 7, 2004, and by Amendment No. 7 as of December 7, 2004, by Amendment No. 8 as of November 7, 2006, and by Amendment No. 9 as of March 4, 2008 under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, Agency is involved in potential litigation over its contract with the State of California Department of Water Resources (DWR), and what is commonly referred to as the Area of Origin Litigation; and

**WHEREAS**, DWR has contracts with Agency and other water agencies ("State Water Contractors") to deliver water from the State Water Project ("SWP") where it calculates and assesses the amount of water the SWP can deliver each year per Article 18 of the State Water Supply Agreement; and

**WHEREAS**, the Agency has authorized negotiations with, filing a claim against and if necessary, the commencement of litigation against, DWR and others, for the purpose of determining the Agency's rights under Article 18 of the State Water Supply Agreement; and

**WHEREAS**, the Agency will seek an agreement with DWR, or otherwise pursue appropriate judicial relief (i.e., consent decree, declaratory judgment, etc.), to confirm that the shortage provisions of Article 18 are inapplicable to Agency by virtue of our rights under the State's area of origin statutes and other applicable law, and

**WHEREAS**, the law firm of Herum Crabtree Brown ("HCB") represents Solano County Water Agency and will act as the lead attorney on the Area of Origin Litigation; and

**WHEREAS**, Agency has contracted with Downey Brand, LLP to specifically represent Agency on the Area of Origin Litigation, and

**WHEREAS**, the parties believe that it is in the best interest of Agency and City to amend the Contract to authorize Agency to sign a Memorandum of Understanding with Solano County Water Agency, The City of Yuba City, and the County of Butte, attached hereto as Exhibit A, and

**WHEREAS**, the parties further believe that it is in the best interest of Agency and City to retain Downey Brand or any other law firm chosen, following written notification by Agency to City, to represent the Agency and City as this case moves forward, and

**WHEREAS**, participation in the Memorandum of Understanding will benefit the Agency and City through coordination of other water contractors in similar positions and a savings in any potential litigation costs by this coordinated effort; and

**WHEREAS**, pursuant to the Agreement Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the Agreement with City including costs related to joining of the Memorandum of Understanding and any potential litigation result of;

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Contract shall be modified, as Amendment No. 10, as follows:

1. Paragraph 20 is added to the Contract for Water Supply from North Bay Aqueduct between Agency and City as part of Amendment No. 10, as follows:

"20. Memorandum of Understanding with Solano County Water Agency, the County of Butte and the City of Yuba City for participation in the negotiations and litigation against the California Department of Water Resources ("DWR") for the purpose of determining the Agency's rights under Article 18 of the State Water Supply Agreement.

(a) Agency shall sign a Memorandum of Understanding and a Confidentiality Agreement with Solano County Water Agency, The City of Yuba City, and the County of Butte to govern the allocation of attorney's fees and other costs arising from the Article 18 negotiations and litigation (as defined in the Memorandum of Understanding), the designation of lead counsel, and related confidentiality and administrative issues in order to seek an agreement with DWR, or otherwise pursue appropriate judicial relief (i.e., consent decree, declaratory judgment, etc.) to confirm that the shortage provisions under Article 18 of the State Water Supply Agreement are inapplicable to the Agency, and other State Water Contractors participating in this MOU, by virtue of Agency's rights under the State's area of origin statutes and other applicable law.

(b) (i) City shall reimburse Agency for its proportionate share of costs incurred due to the prosecution of the Article 18 negotiations and litigation against DWR, including the fees of any and all attorney's hired, in accordance with Paragraph 20(e) below, to represent the Agency on this item, and costs associated with the Memorandum of Understanding including but not limited to litigation and expert costs, administrative costs, and potential costs under Code of Civil Procedure Section 1032. These costs shall be apportioned among all Member Units directly proportional to their ultimate Original Table A (25,000 AF total for Napa County) annual entitlements.

(ii) City shall pay its share of the costs described in subparagraph (b) (i) not later than fifteen (15) days after receipt of Agency's invoices. Agency's invoices shall be in amounts sufficient to allow Agency to receive funds to pay City's proportionate share of Agency's current obligations of the Memorandum of Understanding no sooner than thirty (30) days prior to the date the same become due.

(c) Agency shall keep City informed of the status of litigation and/or settlement negotiations and shall enter into a settlement agreement only after each of the Member Units agree in writing to the settlement agreement. The Agency shall not execute any settlement agreement unless and until each Member Unit has provided Agency with written consent to the settlement agreement. Settlement proceeds, if any, shall be apportioned among all Member Units directly proportional to their ultimate Original Table A (25,000 AF total for Napa County) annual entitlements.

(d) Agency shall not withdraw from the Memorandum of Understanding without written authorization from each of the Member Units and after compliance with the Memorandum of Understanding.

(e) Agency shall change attorneys and/or hire new attorneys to represent Agency on this area or origin litigation only after each of the Member Units agrees in writing to the change(s)."

2. Regarding Paragraph 1 above, Agency and City acknowledge that it is the intent of the parties that the other Member Units (defined in Paragraph 1(f) of the Contract for Water Supply from North Bay Aqueduct between Agency and City) within the service area of Agency under the State Water Supply Agreement will also be amending their respective Agreements with Agency in substantially the same manner as set forth above.

3. Except as provided in (1) and (2) above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.9 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

**CITY OF AMERICAN CANYON**

By Leon Garcia  
LEON GARCIA  
Mayor

**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By Brad Wagenknecht  
BRAD WAGENKNECHT  
Chair of the Board

**ATTEST:**

By Dorothy Roadman  
DOROTHY ROADMAN  
City Clerk

**ATTEST:**

By Gladys I. Coil  
GLADYS I. COIL  
District Secretary

**APPROVED AS TO FORM:**

By William D. Ross  
WILLIAM D. ROSS  
City Attorney

**APPROVED AS TO FORM:**

By Robert Westmeyer  
ROBERT WESTMEYER  
District Legal Counsel

**COUNTERSIGNED:**

By Barry K. Whitley  
BARRY WHITLEY  
Finance Director

APPROVED 4-15-08  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT  
GLADYS I. COIL  
SECRETARY OF THE DISTRICT  
BY Barry Whitley Deputy









**AMENDMENT NO. 11 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 11 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Agreement", is made as of this 4<sup>th</sup> day of August, 2009, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California that specifies the amount of water available to Agency for disbursement to its Member Units (defined by Agreement No. 423, Paragraph 1(f)) in any given year and a number of component charges for water allocated and delivered through the North Bay Aqueduct; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Agreement No. 423 as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, and by Amendment No. 5 as of September 21, 2000, and by Amendment No. 6 as of December 7, 2004, and by Amendment No. 7 as of December 7, 2004, by Amendment No. 8 as of November 7, 2006, by Amendment No. 9 as of March 4, 2008, and by Amendment No. 10 as of April 15, 2008, under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, the California Department of Water Resources (DWR), in cooperation with other state and federal agencies, has been directed by the Governor to initiate the public environmental review process necessary for the Bay Delta Conservation Plan (BDCP), which is a collaborative effort between public water agencies, environmental organizations and state and federal agencies to map out a comprehensive, long-term conservation plan for the deteriorating Sacramento-San Joaquin River Delta (Delta); and

**WHEREAS**, DWR is beginning the environmental analysis and preliminary engineering studies for the BDCP, including conveyance alternatives, as directed by the Governor under the Delta Habitat Conservation and Conveyance Program (DHCCP); and

**WHEREAS**, Agency and City receive benefits from the North Bay Aqueduct (NBA) facilities of the State Water Project (SWP), the NBA is located in the defined boundary of the Delta, and the Delta may be changed in ways that impact the NBA as part of the Bay Delta Conservation Plan and Delta Habitat Conservation and Conveyance Plan action items, and

**WHEREAS**, Agency is a member of the State Water Project Contractors Authority (SWPCA); a joint powers authority (JPA), created in 2003, and comprised of 24 public water agencies that receive water from the SWP; and

**WHEREAS**, the SWPCA will coordinate the activities of its members to support the DHCCP and ensure that the DHCCP's costs and management are responsive to the needs of the SWPCA members and ultimately to California's water rate payers, including the Agency's Member Units and their constituents; and

**WHEREAS**, the SWPCA has formed a Delta Specific Project Committee (DSPC) for the purpose of making recommendations related to the management of the DHCCP to the SWPCA Board; and

**WHEREAS**, participating in the DSPC and the DHCCP is voluntary, and has significant cost components, but would allow District participation in the decision-making process for items that may affect the Agency and City; and

**WHEREAS**, the parties believe that it is in the best interest of Agency and City to amend the Agreement No. 423 to authorize Agency to become a member of the SWPCA's Delta Specific Project Committee and to sign a Funding Agreement with DWR for the costs of environmental analysis, planning and design for the Delta Habitat Conservation and Conveyance Plan (hereinafter referred to as "Funding Agreement"), attached hereto as Exhibit A, and

**WHEREAS**, pursuant to Agreement No. 423, Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the State Water Supply Agreement and Agreement No. 423, including participation in this DSPC and this DHCCP funding agreement with DWR.

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that the Agreement No. 423 shall be amended as follows:

1. Paragraph 21 is added to the Agreement No. 423 for Water Supply from North Bay Aqueduct between Agency and City as part of Amendment No. 11, as follows:

“21. Agreement for Funding Between the Department of Water Resources and Napa County Flood Control and Water Conservation District (Agency) For the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance and Participation in the State Water Project Contractors Authority Delta Specific Project Committee

(a) Agency shall sign the “Agreement for Funding Between the Department of Water Resources and Napa County Flood Control and Water Conservation District For the Costs of Environmental Analysis, Planning and Design of the Delta Conservation Measures, Including Delta Conveyance Options” (hereinafter “Funding Agreement”). A copy of this Funding Agreement is attached hereto as Exhibit A.

(b) In addition to the funding set forth in subsection (a) above, Agency shall also sign a Specific Project Agreement for participation in the State Water Project Contractors Authority Delta Specific Project Committee, and shall share costs of participation as described in the SWPCA DSPC Specific Project Agreement. A copy of this Specific Project Agreement is attached hereto as Exhibit B.

(c) (i) City shall reimburse Agency for its proportionate share of costs incurred under the provisions of subsections (a) and (b) above, including but not limited to, Agency administrative costs. These costs shall be apportioned among all “Member Units” (defined by Agreement No. 423, paragraph 1(f)) directly proportional to their ultimate Table A amount annual entitlements, including water purchased from Kern County Water Agency in 2000 (29,025 AF total for Napa County).

(ii) City shall pay its share of the costs described in subsection (c) (i) not later than fifteen (15) days after receipt of Agency’s invoices. Agency’s invoices shall be in amounts sufficient to allow Agency to pay City’s proportionate share of Agency’s current obligations of the Funding Agreement no sooner than thirty (30) days prior to the date the same become due.

(d) Agency shall keep City informed of the status of Delta Habitat Conservation and Conveyance Plan work and shall confer with City in all related decision-making.

2. Regarding Paragraph 1 above, Agency and City acknowledge that it is the intent of the parties that the other Member Units (defined by Agreement No. 423, Paragraph 1(f)) within the service area of Agency under the State Water Supply Agreement will also be

amending their respective Agreements with Agency in substantially the same manner as set forth above.

3. Except as provided in (1) and (2) above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 11 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

**CITY OF AMERICAN CANYON**

By   
RICHARD J. RAMIREZ  
City Manager


**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By   
DEL BRITTON  
Chair of the Board

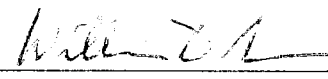
**ATTEST:**

By   
CHERRI WALTON  
Deputy City Clerk

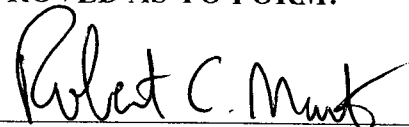
**ATTEST:**

By   
GLADYS I. COIL  
District Secretary

**APPROVED AS TO FORM:**

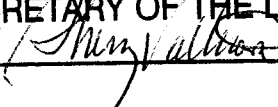
By   
WILLIAM D. ROSS  
City Attorney

**APPROVED AS TO FORM:**

By   
ROBERT WESTMEYER  
District Legal Counsel

**COUNTERSIGNED:**

By   
BARRY WHITLEY  
Finance Director

APPROVED 8-4-09  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT  
GLADYS I. COIL  
SECRETARY OF THE DISTRICT  
BY  Deputy

State of California  
California Natural Resources Agency  
DEPARTMENT OF WATER RESOURCES

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AGREEMENT FOR  
FUNDING BETWEEN  
THE DEPARTMENT OF WATER RESOURCES  
AND  
NAPA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

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FOR THE COSTS OF ENVIRONMENTAL ANALYSIS, PLANNING AND DESIGN  
OF DELTA CONSERVATION MEASURES,  
INCLUDING DELTA CONVEYANCE OPTIONS

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(SWPAO #09915)

THIS AGREEMENT is made this 4<sup>th</sup> day of August, 2009, pursuant to the provisions of all applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources ("DWR"), and Napa County Flood Control and Water Conservation District ("Contractor"). DWR and the Contractor may also be referred to individually as "Party" or collectively as "Parties."

### Recitals

- A. **WHEREAS**, DWR and Contractor have entered into and subsequently amended a long-term water supply contract, herein referred to as the "Water Supply Contract," providing that DWR will supply certain quantities of water to Contractor, and providing that Contractor shall make certain payments to DWR, and setting forth the terms and conditions of such supply and such payment; and
- B. **WHEREAS**, DWR and several State Water Project (SWP) Contractors are parties to a Memorandum of Agreement ("MOA"), providing that they will collaborate to develop the environmental documents, engineering designs, and other necessary information for possible conservation measures, particularly Delta water conveyance options; and
- C. **WHEREAS**, the MOA is intended to support and complement the certain activities of the Bay-Delta Conservation Plan ("BDCP") Steering Committee by establishing procedures to facilitate the funding and planning for the Delta water conveyance and habitat conservation studies, which the Parties refer to as the "Planning Phase" of the Delta Habitat Conservation and Conveyance Program ("DHCCP" or "Program"); and
- D. **WHEREAS**, DWR and a group of SWP Contractors, collectively known as the "Participating SWP Contractors," believe the DHCCP Planning Phase is necessary to facilitate the assessment and planning of likely conservation measures of the BDCP, analyze responses to the multiple threats to the State's economic well being posed by the current Delta water conveyance system's vulnerability to seismic risk, climate change, and ongoing regulatory prescriptions, and to consider prudent funding sources for species conservation and improved Delta water conveyance facilities in order to achieve related benefits to water supply, water supply reliability, and ecosystem health and resiliency; and
- E. **WHEREAS**, subject to any adjustments provided for in the MOA, DWR will fund fifty percent (50%) of the total cost for the DHCCP Planning Phase and will collect that amount from Contractor and other Participating SWP Contractors, pursuant to this and similar Agreements; and
- F. **WHEREAS**, subject to any adjustments provided for in the MOA, certain federal Central Valley Project contractors have agreed to fund the remaining 50 percent of the total DHCCP Planning Phase costs and Reclamation, as allowed under federal appropriations law, via in-kind services and a financial assistance agreement, will provide some portion of this 50 percent; and

- G. **WHEREAS**, DWR and the Participating SWP Contractors are endeavoring to increase DWR's flexibility to perform work on the DHCCP Planning Phase by modifying the funding practices and providing funds so the DHCCP Planning Phase work may start as soon as possible; and
- H. **WHEREAS**, because DWR must have a source of funding to repay and fund the costs of the DHCCP Planning Phase starting in 2008 until its expected completion by 2010, the Contractor, along with the other Participating SWP Contractors, is willing to provide such funds under the terms of this Agreement through the DHCCP charge; and
- I. **WHEREAS**, DWR is willing to credit the Contractor and the other Participating SWP Contractors from 2008 excess revenue-bond reserve funds, an amount equal to the Contractor's allocation of the 2008 DHCCP Planning Phase costs, and to credit additional reserve funds in 2009 as provided by Article 50 of the Water Supply Contract; and
- J. **WHEREAS**, Contractor is willing to enter into this Agreement to pay a share of the DHCCP Planning Phase costs, and, in consideration therefore, DWR is willing to consult with Contractor and other Participating SWP Contractors on decisions related to the budget, scope, schedule, and activities of the Program's Planning Phase to ensure its timely completion in a cost-efficient manner, and
- K. **WHEREAS**, it is DWR's intent that all funds needed to meet DWR's Share of the Program's Costs will be collected through this and all other SWP DHCCP Funding Agreements.



## AGREEMENT

NOW THEREFORE, it is mutually agreed by DWR and Contractor as follows:

### 1. Definitions

When used in this Agreement, the definitions in the Water Supply Contract shall apply. In addition, the following definitions shall apply:

- a. **"DHCCP" or "Program"** means the Delta Habitat Conservation and Conveyance Program that will develop possible BDCP conservation measures, including Delta conveyance options as described in the MOA.
- b. **"DHCCP Planning Phase" or "Program's Planning Phase"** means the proposed development of environmental documents, planning, engineering designs, and other necessary information for possible BDCP conservation measures, including Delta conveyance options as described in the MOA. It does not include construction activity for any BDCP conservation measure, including any Delta Conveyance option.
- c. **"MOA"** means the "Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan," a copy of which is attached hereto as Exhibit 1.
- d. **"SWP"** means the State Water Project operated by DWR. The SWP generally includes the State Water Facilities, as defined in California Water Code section 12934(d), and certain facilities found in the Central Valley Project Act at section 11100 et. seq.
- e. **"Water Supply Contract"** means the long-term water supply contract between Contractor and DWR, and similar contracts entered into by DWR and other Participating SWP Contractors.
- f. **"Water Supply Contractor"** means one of the contractors that signed a Water Supply Contract which is still in effect.
- g. **"DHCCP SWP Funding Agreement"** means this Agreement and agreements substantially the same as this Agreement signed by Participating SWP Contractors and DWR.
- h. **"Participating SWP Contractor"** means a SWP Water Supply Contractor that has executed a DHCCP SWP Funding Agreement.
- i. **"Calendar Year"** means the period January 1 through December 31.

- j. **"DHCCP Table A Amount"** means, for Contractor, the maximum Table A amount as listed in its Water Supply Contract. The DHCCP Table A Amount will be used each year to calculate the Contractor's share of the DHCCP Planning Phase charges as a percentage of the sum of all the DHCCP Table A Amounts of the Participating SWP Contractors.
- k. **"2008 DHCCP Charge"** means a charge to Contractor included in its annual statement of charges for 2008 that reflects the estimated costs for DHCCP in 2008.
- l. **"Department's Share of the Program's Costs"** means fifty percent (50%) of the total DHCCP Planning Phase costs.
- m. **"DHCCP Pay-Go Charge"** means the charge to the Contractor pursuant to this Agreement included in its Annual Statement of Charges to recover the Contractor's allocation of Department's Share of the Program's Costs beginning in 2009 and continuing until the Program's Planning Phase is completed or December 31, 2011, which ever is earlier.
- n. **"Reclamation"** means the United States Department of the Interior, Bureau of Reclamation.
- o. **"Central Valley Project contractors"** means the Central Valley Project contractors that are involved in funding the DHCCP Planning Phase, which are a subset of the total Central Valley Project contractors group.

**2. Purpose of the Agreement**

- a. The purpose of this Agreement is to establish the terms and conditions under which Contractor will provide funding to DWR that, along with funding from the other Participating SWP Contractors, will provide all funds needed to pay the actual costs of DWR's Share of the Program's costs.
- b. Funding pursuant to this Agreement addresses only the DHCCP Planning Phase. After completing the DHCCP Planning Phase, if the Parties determine to proceed with actions beyond the DHCCP Planning Phase, including the implementation and construction phases of the DHCCP, the Parties may enter into additional funding agreements.

**3. Term of Agreement**

This Agreement will take effect upon execution of the Parties and will remain in effect until the DHCCP Planning Phase is completed or until December 31, 2011, whichever comes first, unless extended by written amendment.

**4. DHCCP Planning Phase Costs**

Should the funding procedures established by this and all other DHCCP SWP Funding Agreements, or funding procedures established by Funding Agreements between DWR and Reclamation or federal contractors, terminate, DWR and the Participating Contractors, other than the Participating Contractors that have withdrawn pursuant to Section 9(a), shall use their best efforts to develop a funding plan that will allow for the timely completion of the DHCCP Planning Phase. Any subsequent funding plan for completion of the DHCCP Planning Phase shall include provisions that ensure that Participating Contractors that have withdrawn do not incur any additional charges related to the completion of the DHCCP Planning Phase. For purposes of this paragraph, "charges" shall mean 1) costs chargeable to the contractor or 2) revenues and/or cash available to pay rate management credits to the contractor. This provision shall survive termination of this Agreement. After one year from the termination of the MOA, nothing in this provision would prevent DWR from charging the Contractor in accordance with its Water Supply Contract to fund other and new Delta conveyance planning activities that are distinct and independent of the DHCCP and BDCP.

**5. 2008 DHCCP Charge**

- a. Before DWR may implement this section and to obtain funding for DWR's Share of the Program Costs incurred before December 31, 2008, the following must be satisfied: (i) this Agreement is fully executed by the Parties, and (ii) the SWP DHCCP Funding Agreements and the MOA are signed by DWR and the SWP Contractors who are also parties to the MOA. Once DWR and the Participating SWP Contractors who are parties to the MOA have signed the MOA, the Parties agree to abide by the terms and conditions of the MOA, notwithstanding that the Parties recognize the MOA may not have been fully executed.
- b. DWR will submit a revised 2008 Statement of Charges to the Contractor that includes Contractor's estimated 2008 DHCCP Charge. The 2008 DHCCP Charge shall be based on actual costs incurred in 2008, pursuant to Paragraph 7 (Program Cost, Budgeting and Allocation). At the time the revised 2008 Statement of Charges is transmitted to the Contractor, DWR shall submit to the Contractor a revised invoice for the month of July 2008 reflecting credits resulting from the release of excess revenue bond reserve funds against Contractor's Transportation Capital charges in an amount equal to the amount of the revised 2008 Statement of Charges, as provided by the Water Supply Contract.
- c. Should the funding from Contractor for the estimated costs be insufficient to cover the actual costs incurred by DWR through December 31, 2008, DWR shall include the Contractor's additional 2008 costs in its 2009

Statement of Charges. After the actual costs incurred up to and including December 31, 2008, have been finally determined, a table reflecting the actual funding advanced by each Participating SWP Contractor in 2008 will be attached hereto as Exhibit 2, without constituting an amendment of this Agreement. All 2008 DHCCP Planning Phase costs will be allocated to each Participating SWP Contractor in proportion to the ratio of its DHCCP Table A Amount to the sum of all Participating SWP Contractors' 2008 DHCCP Table A Amounts. Attached hereto as Exhibit 3A and 3B is a table of each Participating SWP Contractor's estimated share of the 2008 DHCCP Charge.

**6. DHCCP Pay-Go Charge**

- a. Before DWR may implement this section to seek funding for costs incurred after December 31, 2008, the following must be completed: (a) this Agreement is fully executed by the Parties and is in full force and effect, (b) the MOA is executed by all of its parties and in effect, and (c) DWR has executed a binding agreement or agreements with Reclamation and certain Central Valley Project contractors which will establish funding procedures that ensure 50 percent of the DHCCP Planning Phase costs are paid by federal interests. The agreements with the Central Valley Project contractors shall also include provisions that (i) require the Central Valley Project contractors to pay 50 percent of the DHCCP Planning Phase costs incurred prior to October 1, 2008 within 14 days of execution of those agreements; and (ii) provide assurances that 50 percent of all costs incurred after October 1, 2008, and until completion of the Program are paid on a schedule and in amounts, similar to the payment schedule and amounts for the Participating SWP Contractors.
- b. Except for those costs described in Section 5 above, DWR shall recover DWR's Share of Program Costs through the DHCCP Pay-Go Charge. The DHCCP Pay-Go Charge shall recover these costs incurred or to be incurred by DWR for the DHCCP Planning Phase beginning on January 1, 2009, and, unless sooner terminated pursuant to Article 9 of this Agreement, continuing until the Program's Planning Phase is completed or December 31, 2011, which ever is earlier.
- c. To facilitate billing on a calendar year basis, the DHCCP Pay-Go Charge will be computed and included in Contractor's and other Participating SWP Contractor's Annual Statements of Charges for 2009 and thereafter as long as this Agreement is in effect under the Transportation Minimum Component and shall be collected in 12 equal monthly payments as described in Contractor's Water Supply Contract. The DHCCP Pay-Go Charges shall initially be based on estimates of costs determined pursuant to Section 7 (Program Cost, Budgeting and Allocation). These charges

shall be adjusted after the end of each Calendar Year to accurately reflect DWR's Share of Program Costs during that Calendar Year. Such adjustments shall be reflected in the charges in the following calendar year.

- d. The DHCCP Pay-Go Charge will be allocated to each Participating SWP Contractor in proportion to the ratio of its DHCCP Table A Amount to the sum of all Participating SWP Contractors' DHCCP Table A Amounts. Attached hereto as Exhibit 4A and 4B is a table of each Participating SWP Contractor's estimated share of the DHCCP Planning Phase Charges for 2009 and 2010. As these charges are adjusted, or should charges be estimated for 2011, or should there be a change in the ratio due to a withdrawal of a Contractor from the Program's Planning Phase, revised versions of Exhibit 4B Contractor shall be attached hereto, without constituting an amendment of this Agreement.
- e. DWR prepared a revision to the calendar year 2009 Statement of Charges in mid-December 2008, which includes an estimated allocation of the DHCCP costs among the anticipated participating Contractors. Execution of this Agreement, even if occurring after January 1, 2009, shall constitute agreement by the Contractor to pay the full amount of the Contractor's share of the 2009 DHCCP charge. The full amount of all prior months unpaid payments for 2009 shall be paid by the Contractor on the first monthly payment to DWR following execution of this Agreement.
- f. Once the final participation level in the DHCCP Program is known by DWR, DWR shall prepare an amended 2009 DHCCP cost allocation and invoice and the Contractor shall pay the revised amount, if any, over the remaining months in calendar year 2009. This revised invoice is anticipated to be distributed within the first four months of calendar year 2009.
- g. The parties recognize that DWR intends to retain approximately \$12 million of the excess revenue bond reserve funds to be applied as a credit against the 2008 Transportation Capital charges. DWR also intends to apply approximately \$30 million of excess revenue bond reserve fund credits against the January 2009 Transportation Capital payments from the Contractors, with the remaining excess revenue bond reserve fund credits to be applied as a credit against the July 2009 Transportation Capital payments.

**7. Program Cost, Budget and Allocation**

- a. As described in the MOA, DWR will work collaboratively with the DHCCP Executive Committee to determine the budget, schedules, and activities of the DHCCP Planning Phase.
- b. The total cost for the DHCCP Planning Phase is currently estimated at \$140 million. This estimate may change in the future as more information is developed about the costs of planning and designing the potential BDCP conservation measures and water conveyance facilities.
- c. DWR is responsible for formulating the DHCCP Planning Phase Budget with specific DHCCP Planning Phase elements and will work collaboratively through the MOA to develop the budget.
- d. The Parties to the MOA have committed to an initial, three-year budget. A copy of the initial budget is attached hereto as Exhibit 5. DWR, in collaboration with the Executive Committee, will consider and approve revised budgets for work as necessary. Revised budget(s) shall be attached hereto as subsequent exhibits, without constituting an amendment of this Agreement, provided they do not exceed the funding limit set forth in Section 7(e).
- e. Notwithstanding anything set forth in this Agreement or decided through the MOA process, the maximum amount of DWR's Share of Program Costs that shall be funded through this Agreement and all other DHCCP SWP Funding Agreements shall not exceed \$70,000,000.

**8. Reimbursement for DHCCP Planning Phase**

- a. If the DHCCP is approved to proceed with construction, DWR intends to issue Revenue Bonds to pay for such construction. DWR shall include in the first issue of Revenue Bonds, pursuant to and consistent with Treasury Regulation 1.150-2, an amount sufficient to reimburse the Contractor and all other Participating SWP Contractors for all planning costs paid through the 2008 DHCCP Charge and the DHCCP Pay-Go Charges. DWR, within 10 days of the effective date of this Agreement, shall adopt the necessary documents to conform to the IRS requirements to allow these costs to be included in a future revenue bond issue.
- b. If the DHCCP is not approved to proceed with construction or a revenue bond sale does not occur, no reimbursements will occur. Contractor recognizes that, should the DHCCP not be approved to proceed with construction, Contractor may pay costs for the DHCCP Planning Phase that are greater than the amount it would have paid if other means of funding the Program, including under the Water Supply Contract, had

been utilized. Contractor waives any claims it may have with respect to the greater amount that may be paid by it under this Agreement.

- c. The provisions of this Section 8 shall survive termination of this Agreement and/or the MOA.

**9. Withdrawal and Termination**

- a. Contractor may withdraw from this Agreement at any time. However, Contractor shall provide 30 days advanced written notice to DWR, all other Participating SWP Contractors, and all Parties to the MOA. The notice of the effective date of its withdrawal shall include a detailed written explanation of why it intends to withdraw.
- b. If the MOA terminates, this Agreement shall terminate. However, notwithstanding anything to the contrary set forth in the MOA, DWR agrees that it will not withdraw from the MOA as long as DWR's Share of the Program's Costs remains fully funded. DWR shall remain responsible for administering the provisions of this Agreement that survive termination or withdrawal.
- c. If Contractor is a signatory to the MOA, Contractor's withdrawal from the MOA shall be deemed as withdrawal from this Agreement.
- d. If any Participating SWP Contractor or Contractors withdraws from its DHCCP SWP Funding Agreement, Contractor, if not a withdrawing party, shall notify DWR within seven days after the effective date of such withdrawal as to whether it intends to continue operating under this Agreement. Failure to provide such notice shall be deemed an agreement to continue as a Party to this Agreement.
- e. If one or more Participating SWP Contractors withdraw from their DHCCP SWP Funding Agreements and Contractor decides to continue operating under this Agreement, then Contractor's cost allocation share and the cost allocation shares of all other remaining Participating SWP Contractors will be changed to reflect the new ratios of their DHCCP Table A Amounts to the sum of the remaining Participating SWP Contractors' DHCCP Table A Amounts. Such adjustment shall be made through a revised billing payable in equal installments over the remainder of the then current calendar year or six months from the date the revised billing is received by Contractor, whichever is longer. DWR shall transmit the revised billing to Contractor within 60 days of the effective date of the withdrawal that triggered the revised cost allocation.

- f. In the event of Contractor's noticed withdrawal from this Agreement, Contractor shall no longer be obligated to fund any costs related to DHCCP Planning Phase task orders that are subsequently approved by DWR or that were approved by DWR less than 60 days prior to the date the notice of withdrawal was transmitted to DWR pursuant to Section 9(a). However, Contractor shall remain responsible for its share of the costs of completing any DHCCP Planning Phase task orders approved 60 days prior to the date the notice of withdrawal was transmitted.
- g. If termination of the MOA occurs concurrent with or after Contractor's notice of withdrawal from this Agreement but prior to the effective date of the Contractor's withdrawal, or the Contractor has not withdrawn, Contractor is obligated to pay its share of the reasonable termination costs incurred in fulfillment of the DHCCP Planning Phase or the objectives of the MOA, such as costs associated with early termination of consultant contracts. The total termination costs will be shared on a 50-50 basis between the State and federal interests. The Contractor's share of termination costs shall be determined using the same ratio as described in Section 6(d) of this Agreement.
- h. The provisions of paragraphs (b), (d), (e), (f) and (g) of this Section 9 shall survive termination of this Agreement and/or the MOA

**10. Invoices, Notices Or Other Communications**

- a. All invoices, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (i.) served personally on the Party to whom notice is to be given; (ii.) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii.) on the third day after mailing, if mailed to the Party to whom invoice, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Chief, State Water Project Analysis Office  
Department of Water Resources  
State Water Project Analysis Office  
Department of Water Resources  
1416 Ninth Street, Room 1620  
Post Office Box 942836  
Sacramento, California 94236-0001



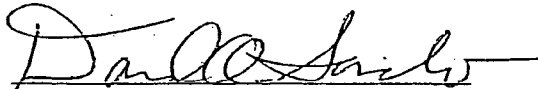
NCFC&WCD: Mr. Robert Peterson  
Director of Public Works  
Napa County  
Department of Public Works  
1195 Third Street, Suite 201  
Napa, California 94559

- b. The time for providing any payments, notices, or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement.
11. **No Amendment to Water Supply Contract**  
This Agreement does not amend, abridge, or modify the Water Supply Contract in any way.
12. **Amendments**  
Except for the addition of exhibits as authorized herein, this Agreement may be amended or modified only by a subsequent written agreement approved and executed by the Parties.
13. **Agreement Conformity**  
All Agreements to fund the DHCCP Planning Phase entered into by DWR and Participating SWP Contractors shall be substantially uniform.
14. **Applicable Law**  
This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.
15. **Complete Contract**  
This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.
16. **Execution in Counterpart**  
This Agreement may be executed in counterpart, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.

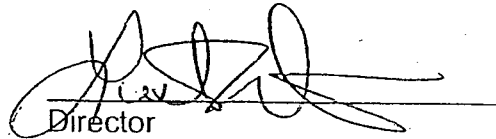
IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives,  
have executed this Agreement on the last date set forth below.

Approved as to legal form  
and Sufficiency

State of California  
Department of Water Resources



Chief Counsel  
Department of Water Resources



Director

MAR 12 2009

Date

3/12/09

Date

Approved as to legal form  
and Sufficiency

Napa County Flood Control and  
Water Conservation District

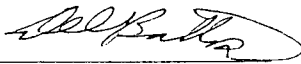
Counsel for NCFC&WCD

Director of Public Works

Date

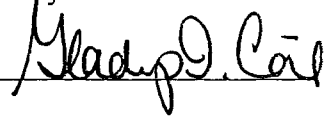
Date

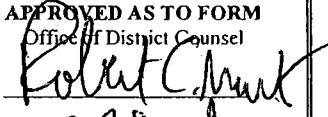
NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT,  
a special district of the State of California

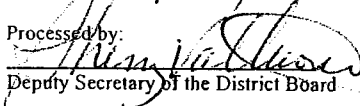
By:   
DEL BRITTON,  
Chairperson of the Board of Directors

8-4-09  
Date

ATTEST: GLADYS I. COIL  
Secretary of the District Board

By: 

APPROVED AS TO FORM	
Office of District Counsel	
By:	<u></u>
Date:	<u>7-28-09</u>

APPROVED BY THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT	
Date:	<u>8-4-09</u>
Processed by:	<u></u>
Deputy Secretary of the District Board	

### **List of Exhibits to be Attached**

- Exhibit 1: Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan (Paragraph 1.a)
- Exhibit 2: Table of Participating SWP Contractors Actual Advanced Costs for 2008 (Paragraph 5.c)
- Exhibit 3: Participating SWP Contractors Share of 2008 Costs (Paragraph 5.c)
- Exhibit 4: Participating SWP Contractors Estimated Share of 2009 and 2010 DHCCP Planning Phase Costs (Paragraph 6.d)
- Exhibit 5: Initial 3 Year Budget (Paragraph 7.d)

**Exhibit 1**

(Memorandum of Agreement)

**Exhibit 2**

(Actual 2008 DHCCP Costs by participating SWP Contractor)  
(To be provided once final 2008 costs have been determined)

**Exhibit 3A**  
**Estimated 2008 DHCCP Planning Phase Costs**  
by  
All Participating SWP Contractor's

2008 CY Projection	\$ 23,039,000
SWPC 50 Percent	\$ 11,519,500

SWP Contractor/Agency	Table A Amounts Maximum (acre-feet)	% of Table A	SWP Contractor Share
Metropolitan WD Of SC	1,911,500	45.81%	\$ 5,276,936
Kern County Water Agency	998,730	23.93%	\$ 2,757,120
Antelope Valley-East Kern WA	141,400	3.39%	\$ 390,352
Coachella Valley WD	121,100	2.90%	\$ 334,312
San Bernardino Valley MWD	102,600	2.46%	\$ 283,240
Santa Clara Valley WD	100,000	2.40%	\$ 276,063
Tulare Lake Basin WSD	95,922	2.30%	\$ 264,805
Castaic Lake WA	95,200	2.28%	\$ 262,812
Alameda Co FC&WCD - Zone 7	80,619	1.93%	\$ 222,559
Mojave Water Agency	75,800	1.82%	\$ 209,255
Dudley Ridge WD	57,343	1.37%	\$ 158,303
Desert Water Agency	50,000	1.20%	\$ 138,031
Solano County WA	47,756	1.14%	\$ 131,836
Santa Barbara County FCWCD	45,486	1.09%	\$ 125,570
Alameda County WD	42,000	1.01%	\$ 115,946
Napa County FC&WCD	29,025	0.70%	\$ 80,127
San Gabriel Valley MWD	28,800	0.69%	\$ 79,506
Butte County	27,500	0.66%	\$ 75,917
San Luis Obispo Co. FC&WCD	25,000	0.60%	\$ 69,016
Palmdale WD	21,300	0.51%	\$ 58,801
Casitas Municipal WD	20,000	0.48%	\$ 55,213
San Geronio Pass WA	17,300	0.41%	\$ 47,759
City Of Yuba City	9,600	0.23%	\$ 26,502
County Of Kings	9,305	0.22%	\$ 25,688
Crestline-Lake Arrowhead WA	5,800	0.14%	\$ 16,012
Oak Flat WD	5,700	0.14%	\$ 15,736
Empire - West Side ID	3,000	0.07%	\$ 8,282
Plumas County	2,700	0.06%	\$ 7,454
Littlerock Creek ID	2,300	0.06%	\$ 6,349
<b>Total Table A</b>	<b>4,172,786</b>	<b>100%</b>	<b>11,519,500</b>

**Exhibit 3B**  
Estimated 2008 DHCCP Planning Phase Costs  
by  
Estimated Participating SWP Contractor's

2008 CY Projection	\$ 23,039,000
SWPC 50 Percent	\$ 11,519,500

SWP Contractor/Agency	Table A Amounts Maximum (acre-feet)	% of Table A	SWP Contractor Share
Metropolitan WD Of SC	1,911,500	47.37%	\$ 5,456,674
Kern County Water Agency	998,730	24.75%	\$ 2,851,030
Antelope Valley-East Kern WA	141,400	3.50%	\$ 403,648
Coachella Valley WD	121,100	3.00%	\$ 345,699
San Bernardino Valley MWD	102,600	2.54%	\$ 292,888
Santa Clara Valley WD	100,000	2.48%	\$ 285,466
Tulare Lake Basin WSD	95,922	2.38%	\$ 273,824
Castaic Lake WA	95,200	2.36%	\$ 271,763
Alameda Co FC&WCD - Zone 7	80,619	2.00%	\$ 230,139
Mojave Water Agency	75,800	1.88%	\$ 216,383
Desert Water Agency	50,000	1.24%	\$ 142,733
Solano County WA	47,756	1.18%	\$ 136,327
Santa Barbara County FCWCD	45,486	1.13%	\$ 129,847
Alameda County WD	42,000	1.04%	\$ 119,896
Napa County FC&WCD	29,025	0.72%	\$ 82,856
San Gabriel Valley MWD	28,800	0.71%	\$ 82,214
San Luis Obispo Co. FC&WCD	25,000	0.62%	\$ 71,366
Palmdale WD	21,300	0.53%	\$ 60,804
San Geronio Pass WA	17,300	0.43%	\$ 49,386
Crestline-Lake Arrowhead WA	5,800	0.14%	\$ 16,557
<b>Total Table A</b>	<b>4,035,338</b>	<b>100.00%</b>	<b>\$ 11,519,500</b>



**Exhibit 4A**  
**Estimated 2009-2010 DHCCP Planning Phase Costs**  
by  
All Participating SWP Contractor's

Cal Year	2009	2010
CY Projection	\$ 55,242,000	\$ 61,368,000
SWPC 50 Percent	\$ 27,621,000	\$ 30,684,000

SWP Contractor/Agency	Table A Amounts Maximum (acre-feet)	% of Table A	2009 SWP Contractor Project'd Share	2010 SWP Contractor Project'd Share
Metropolitan WD Of SC	1,911,500	45.81%	\$ 12,652,828	\$ 14,055,949
Kern County Water Agency	998,730	23.93%	\$ 6,610,912	\$ 7,344,022
Antelope Valley-East Kern WA	141,400	3.39%	\$ 935,972	\$ 1,039,765
Coachella Valley WD	121,100	2.90%	\$ 801,599	\$ 890,492
San Bernardino Valley MWD	102,600	2.46%	\$ 679,142	\$ 754,455
Santa Clara Valley WD	100,000	2.40%	\$ 661,932	\$ 735,336
Tulare Lake Basin WSD	95,922	2.30%	\$ 634,938	\$ 705,349
Castaic Lake WA	95,200	2.28%	\$ 630,159	\$ 700,040
Alameda Co FC&WCD - Zone 7	80,619	1.93%	\$ 533,643	\$ 592,821
Mojave Water Agency	75,800	1.82%	\$ 501,744	\$ 557,385
Dudley Ridge WD	57,343	1.37%	\$ 379,572	\$ 421,664
Desert Water Agency	50,000	1.20%	\$ 330,966	\$ 367,668
Solano County WA	47,756	1.14%	\$ 316,112	\$ 351,167
Santa Barbara County FCWCD	45,486	1.09%	\$ 301,086	\$ 334,475
Alameda County WD	42,000	1.01%	\$ 278,011	\$ 308,841
Napa County FC&WCD	29,025	0.70%	\$ 192,126	\$ 213,431
San Gabriel Valley MWD	28,800	0.69%	\$ 190,636	\$ 211,777
Butte County	27,500	0.66%	\$ 182,031	\$ 202,217
San Luis Obispo Co. FC&WCD	25,000	0.60%	\$ 165,483	\$ 183,834
Palmdale WD	21,300	0.51%	\$ 140,991	\$ 156,627
Casitas Municipal WD	20,000	0.48%	\$ 132,386	\$ 147,067
San Geronio Pass WA	17,300	0.41%	\$ 114,514	\$ 127,213
City Of Yuba City	9,600	0.23%	\$ 63,545	\$ 70,592
County Of Kings	9,305	0.22%	\$ 61,593	\$ 68,423
Crestline-Lake Arrowhead WA	5,800	0.14%	\$ 38,392	\$ 42,649
Oak Flat WD	5,700	0.14%	\$ 37,730	\$ 41,914
Empire - West Side ID	3,000	0.07%	\$ 19,858	\$ 22,060
Plumas County	2,700	0.06%	\$ 17,872	\$ 19,854
Littlerock Creek ID	2,300	0.06%	\$ 15,224	\$ 16,913
<b>Total Table A</b>	<b>4,172,786</b>	<b>100%</b>	<b>27,621,000</b>	<b>30,684,000</b>

**Exhibit 4B**  
**Estimated 2009-2010 DHCCP Planning Phase Costs**  
**by**  
**Estimated Participating SWP Contractor's**

Cal Year	2009	2010
CY Projection	\$ 55,242,000	\$ 61,368,000
SWPC 50 Percent	\$ 27,621,000	\$ 30,684,000

SWP Contractor/Agency	Table A Amounts Maximum (acre-feet)	% of Table A	2009 SWP Contractor Project'd Share	2010 SWP Contractor Project'd Share
Metropolitan WD Of SC	1,911,500	47.37%	\$ 13,083,797	\$ 14,534,710
Kern County Water Agency	998,730	24.75%	\$ 6,836,087	\$ 7,594,167
Antelope Valley-East Kern WA	141,400	3.50%	\$ 967,852	\$ 1,075,181
Coachella Valley WD	121,100	3.00%	\$ 828,903	\$ 920,823
San Bernardino Valley MWD	102,600	2.54%	\$ 702,274	\$ 780,152
Santa Clara Valley WD	100,000	2.48%	\$ 684,478	\$ 760,382
Tulare Lake Basin WSD	95,922	2.38%	\$ 656,565	\$ 729,374
Castaic Lake WA	95,200	2.36%	\$ 651,623	\$ 723,884
Alameda Co FC&WCD - Zone 7	80,619	2.00%	\$ 551,819	\$ 613,013
Mojave Water Agency	75,800	1.88%	\$ 518,834	\$ 576,370
Desert Water Agency	50,000	1.24%	\$ 342,239	\$ 380,191
Solano County WA	47,756	1.18%	\$ 326,879	\$ 363,128
Santa Barbara County FCWCD	45,486	1.13%	\$ 311,342	\$ 345,868
Alameda County WD	42,000	1.04%	\$ 287,481	\$ 319,361
Napa County FC&WCD	29,025	0.72%	\$ 198,670	\$ 220,701
San Gabriel Valley MWD	28,800	0.71%	\$ 197,130	\$ 218,990
San Luis Obispo Co. FC&WCD	25,000	0.62%	\$ 171,119	\$ 190,096
Palmdale WD	21,300	0.53%	\$ 145,794	\$ 161,961
San Geronio Pass WA	17,300	0.43%	\$ 118,415	\$ 131,546
Crestline-Lake Arrowhead WA	5,800	0.14%	\$ 39,700	\$ 44,102
<b>Total Table A</b>	<b>4,035,338</b>	<b>100%</b>	<b>27,621,000</b>	<b>30,684,000</b>

**Exhibit 5**  
**Initial DHCCP Planning Phase Budget**  
**(In 1000)**

	2008		2009		2010	
Program Element	Jan-Jun	Jul-Dec	Jan-Jun	Jul-Dec	Jan-Jun	Jul-Dec
Management, Planning, & Administration	\$ 0	\$ 3,134	\$ 2,885	\$ 2,915	\$ 2,995	\$ 2,995
Right of Way	\$ 611	\$ 3,155	\$ 2,818	\$ 3,568	\$ 3,817	\$ 3,817
Preliminary Engineering	\$ 476	\$ 7,840	\$11,115	\$11,523	\$15,903	\$15,903
Environmental Services	\$ 178	\$ 5,645	\$ 6,554	\$ 11,390	\$ 7,141	\$ 6,895
Legal Services	\$ 0	\$ 455	\$ 767	\$ 767	\$ 518	\$ 518
General Operating Expenses	\$ 5	\$ 1,540	\$ 438	\$ 502	\$ 389	\$ 477
Six Month Total	\$ 1,270	\$21,769	\$24,577	\$30,665	\$30,763	\$30,605
Calendar Year Total	\$ 23,039		\$ 55,242		\$ 61,368	







**AMENDMENT NO. 12 OF  
NAPA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT AGREEMENT NO. 423**

**(WATER SUPPLY CONTRACT WITH THE CITY OF AMERICAN CANYON)**

**THIS AMENDMENT NO. 12 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 423**, hereinafter referred to as "Agreement", is made as of this 4<sup>th</sup> day of August, 2009, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency", and the CITY OF AMERICAN CANYON, hereinafter referred to as "City";

**RECITALS**

**WHEREAS**, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California that specifies the amount of water available to Agency for disbursement to its Member Units (defined by Agreement No. 423, Paragraph 1(f)) in any given year and a number of component charges for water allocated and delivered through the North Bay Aqueduct; and

**WHEREAS**, City (through its predecessor in interest the American Canyon County Water District) and Agency entered into the Agreement No. 423 as of November 15, 1966, subsequently modified by Amendment No. 1 as of June 24, 1975, and by Amendment No. 2 as of December 21, 1982, and by Amendment No. 3 as of April 6, 1993, and by Amendment No. 4 as of December 3, 1998, and by Amendment No. 5 as of September 21, 2000, and by Amendment No. 6 as of December 7, 2004, and by Amendment No. 7 as of December 7, 2004, by Amendment No. 8 as of November 7, 2006, by Amendment No. 9 as of March 4, 2008, by Amendment No. 10 as of April 15, 2008, and by Amendment No. 11 as of \_\_\_\_\_ under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

**WHEREAS**, State Water Project (SWP) water is diverted into the North Bay Aqueduct from the Sacramento-San Joaquin Delta at the authorized point of diversion pursuant to water rights for the SWP, including, but not limited to, Permit 016483 (A01754A); and

**WHEREAS**, diminished water quality, maintenance problems and other issues at the current authorized point of diversion have prompted Agency and Solano County Water Agency (SCWA), which shares portions of the North Bay Aqueduct facilities, to request DWR to initiate a program for development of an alternate point of diversion for the North Bay Aqueduct; and

**WHEREAS**, the Agency and SCWA desire that DWR be the lead agency of a proposed project under the California Environmental Quality Act (CEQA) for development of an alternate intake at the North Bay Aqueduct and that DWR hire an environmental consultant to do the environmental work and prepare the documentation necessary under CEQA; and

**WHEREAS**, the Agency and SCWA, following completion of the environmental review process, will decide whether to execute amendments to the two agencies' long-term water supply contracts with DWR to enable DWR to proceed with final design and construction, and a Petition for change in Point of Diversion from the State Water Resources Control Board, and

**WHEREAS**, City desires that Agency participate in the North Bay Aqueduct Alternate Intake Project studies for purposes of improved water quality and water supply reliability; and

**WHEREAS**, the parties believe that it is in the best interest of Agency and City to amend Agreement No. 423 to authorize Agency to sign a Funding Agreement with SCWA and DWR for the costs of environmental analysis, planning and design of the North Bay Aqueduct Alternate Intake Project, attached hereto as Exhibit A, and to authorize the Agency to participate in updating a related feasibility study prepared by SCWA in 2003, the scope of work for which is attached hereto as Exhibit B, and

**WHEREAS**, pursuant to Agreement No. 423 Agency requires City to reimburse Agency not only for City's proportionate share of the charges to Agency under the State Water Supply Agreement but also for Agency's expenses incurred in the administration and management of the State Water Supply Agreement and Agreement No. 423, including this North Bay Aqueduct alternate intake project funding agreement with SCWA and DWR, and related studies.

### **TERMS**

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Agency and City that Agreement No. 423 shall be modified, as Amendment No. 12, as follows:

1. Paragraph 22 is added to Agreement No. 423 for Water Supply from North Bay Aqueduct between Agency and City as part of Amendment No. 12, as follows:

"22. Agreement for Funding Among the Department of Water Resources, Solano County Water Agency and Napa County Flood Control and Water Conservation District (Agency) for the Costs of Environmental Analysis, Planning and Design of the North Bay Aqueduct Alternate Intake Project

(a) Agency shall sign the "Agreement for Funding Among the Department of Water Resources, Solano County Water Agency and Napa



County Flood Control and Water Conservation District For the Costs of Environmental Analysis, Planning and Design of the North Bay Aqueduct Alternate Intake Project” (hereinafter “Funding Agreement”). A copy of this Funding Agreement is attached hereto as Exhibit A.

(b) In addition to the funding set forth in subsection (a) above, Agency shall also share costs of a North Bay Aqueduct Alternate Intake feasibility study update with Solano County Water Agency. A copy of the work scope and budget for this work is attached hereto as Exhibit B.

(c) (i) City shall reimburse Agency for its proportionate share of costs incurred under the provisions of subsections (a) and (b) above, including but not limited to, Agency administrative costs. These costs shall be apportioned among all “Member Units” (defined by Agreement No. 1573, paragraph 1(f)) directly proportional to their ultimate Table A amount annual entitlements, including water purchased from Kern County Water Agency in 2000 (29,025 AF total for Napa County).

(ii) City shall pay its share of the costs described in subsection (c) (i) not later than fifteen (15) days after receipt of Agency’s invoices. Agency’s invoices shall be in amounts sufficient to allow Agency to pay City’s proportionate share of Agency’s current obligations of the Funding Agreement no sooner than thirty (30) days prior to the date the same become due.

(d) Agency shall keep City informed of the status of North Bay Aqueduct Alternate Intake Project work and shall confer with City in all related decision-making.

2. Regarding Paragraph 1 above, Agency and City acknowledge that it is the intent of the parties that the other Member Units (defined by Agreement No. 423, Paragraph 1(f)) within the service area of Agency under the State Water Supply Agreement will also be amending their respective Agreements with Agency in substantially the same manner as set forth above.

3. Except as provided in (1) and (2) above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 12 of Napa County Flood Control and Water Conservation District Agreement No. 423 (FC) as of the date first above written.

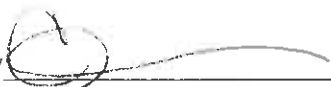
**CITY OF AMERICAN CANYON**

By   
RICHARD J. RAMIREZ  
City Manager


**NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT**

By   
DEL BRITTON  
Chair of the Board


**ATTEST:**

By   
CHERRI WALTON  
Deputy City Clerk

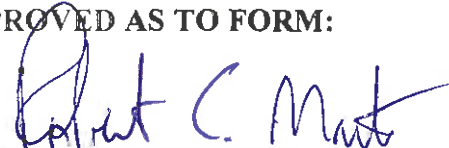
**ATTEST:**

By   
GLADYS I. COIL  
District Secretary

**APPROVED AS TO FORM:**

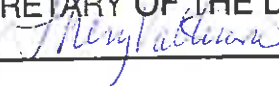
By   
WILLIAM D. ROSS  
City Attorney

**APPROVED AS TO FORM:**

By   
ROBERT WESTMEYER  
District Legal Counsel

**COUNTERSIGNED:**

By   
BARRY WHITLEY  
Finance Director

APPROVED 8-4-09  
FLOOD CONTROL & WATER  
CONSERVATION DISTRICT  
GLADYS I. COIL  
SECRETARY OF THE DISTRICT  
BY  Deputy

**State of California  
The Resources Agency  
Department of Water Resources**

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**Agreement for Funding Among  
The Department of Water Resources,  
Solano County Water Agency and  
Napa County Flood Control and Water Conservation District  
For the Costs of Environmental Analysis, Planning and Design of the  
North Bay Aqueduct Alternative Intake Project**

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THIS AGREEMENT is made and entered into on October 1, 2008, pursuant to the provisions of all applicable laws of the State of California, among the State of California, acting by and through its Department of Water Resources, (DWR), Solano County Water Agency, (SCWA), and Napa County Flood Control and Water Conservation District (Napa). DWR, SCWA and Napa may be referred to individually as "Party" or collectively as "Parties."

**Recitals**

- A. SCWA and Napa receive State Water Project (SWP) water from the North Bay Aqueduct under their Water Supply Contracts.
- B. Water for the North Bay Aqueduct is diverted from the Sacramento- San Joaquin Delta at Barker Slough.
- C. Barker Slough is an area where diminished water quality, maintenance problems and other issues at this intake location have prompted SCWA and Napa to request DWR to initiate a program for development of an alternate intake to the North Bay Aqueduct.
- D. SCWA produced a feasibility study that identified several possible alternate diversion points and pipeline alignments. All of the identified alternate intake points lie along the Sacramento River or its tributaries within the statutorily-defined Sacramento-San Joaquin Delta.
- E. SCWA and Napa have hired an engineering consultant to update the feasibility study to include, among other things, an additional alternative intake location for consideration and to support work to be performed by an environmental consultant.
- F. The Parties desire that DWR be the lead agency of a proposed project under the California Environmental Quality Act (CEQA) for development of an alternative intake at the North Bay Aqueduct and that DWR hire an environmental consultant to do the environmental work and prepare the documentation necessary under CEQA.
- G. DWR is willing to begin the process to initiate a proposed North Bay Aqueduct Alternative Intake Facility, including hiring consultants to prepare environmental documentation and to conduct preliminary design work.

H. It is the Parties' intent that after completing the environmental process, DWR, SCWA and Napa will decide whether to execute amendments to the two agency's long term water supply contracts with DWR to enable DWR to proceed with final design and construction. If constructed, the new facility will become part of the State Water Project. SCWA and Napa will receive water through the new North Bay Aqueduct Alternate Intake Facility and possibly the existing North Bay Aqueduct intake under terms of their Water Supply Contracts.

### **Agreement**

The Parties agree as follows:

#### **1. Definitions**

When used in this Agreement, the following terms shall have the meaning as set forth below:

- a. The "Project" means the development of the proposed North Bay Aqueduct Alternate Intake Facility through the point in time where the environmental work leading to a Notice of Determination is completed.
- b. The "RFQ" means the request for qualifications that will result in hiring an environmental consultant for the proposed Project.
- c. The "SWP" means the State Water Project operated by DWR. The SWP is also known as the State Water Facilities, as defined in California Water Code section 12934(d).
- d. The "Water Supply Contract" means the long-term water supply contract between SCWA and DWR and between Napa and DWR.

e. The "Cost Sharing Split" means the sharing of all costs incurred by DWR to advance the Project on a cost sharing arrangement of sixty-nine (69) percent paid by SCWA and thirty-one (31) percent paid by Napa. These percentages reflect the estimated future share of facilities should the facilities be sized to include SCWA's non-State Water Project water rights.

f. The "North Bay Aqueduct Alternate Intake Facility" means the fully designed, constructed and operational intake and pipeline system that is developed after the Notice of Determination is filed for the Project.

## **2. Purpose of the Agreement**

The purpose of this agreement is to establish the terms and conditions under which:

- (a) the Parties will cooperate in Project planning, preliminary design, and environmental analysis and review; and
- (b) SCWA and Napa will provide advance funding to enable DWR to proceed with the Project planning, preliminary design and environmental analysis and review.

## **3. Term**

This agreement will become effective upon execution by DWR and one contractor. The first contractor to sign (First Contractor) will assume the advance funding obligations of both contractors under this agreement. If the Second Contractor later executes this agreement and First Contractor remains a party to the Agreement, the Second Contractor shall pay First Contractor directly for the financial obligations First Contractor has incurred on Second Contractor's behalf according to the Cost Sharing Split consistent with Section 9 of this Agreement. This Agreement will terminate on December 31, 2012, upon issuance of the Notice of Determination in accordance with the Public Resources

Code or as provided in Section 12 below, with ninety (90) days written notice from any party to the other parties, whichever occurs first. Any financial obligations of the Parties under this Agreement incurred prior to the date of termination shall continue after termination.

**4. DWR Responsibilities**

DWR shall do the following:

- a. Serve as program and project manager
- b. Manage, assist, and approve any and all environmental work conducted by consultants or the Parties.
- c. Serve as the CEQA Lead Agency for the Project.
- d. Prepare, in accordance with the DWR's architectural and engineering contract process, an RFQ and carry out a process for hiring a consultant to advance the Project in accordance with this Agreement. This process includes: advertise, analyze statements of qualifications, conduct interviews, evaluate proposals, select a candidate, negotiate costs, and prepare and execute a contract with the selected environmental consultant to prepare the environmental documents described in a Scope of Work document.
- e. Draft and finalize a Scope of Work that describes, in general terms, tasks and environmental documents to be completed by the environmental consultant for the Project. Specific work will also be assigned to the consultant through task orders developed by DWR and as required for the Project. DWR shall prepare a draft Scope of Work and provide it to SCWA and Napa for their review and comment. Napa and SCWA shall return the draft Scope of Work to DWR within two weeks of receiving

it. DWR shall consider comments provided by SCWA and Napa as it finalizes the document.

- f. Secure entry permits and rights-of-way necessary for the Project.
- g. Coordinate with Federal agencies to arrange compliance with the National Environmental Policy Act, the Federal Endangered Species Act, and other relevant laws.

**5. SCWA Responsibilities**

SCWA shall do the following:

- a. Assist in obtaining right of entry permits or other permits and approvals from governmental agencies, if appropriate.
- b. Assist the City of Vallejo in the water rights process required for changing the point of diversion for the City water rights.

**6. SCWA and Napa Joint Responsibilities**

SCWA and Napa shall do the following:

- a. Participate in the process of hiring the environmental consultant.
- b. Review and comment on all environmental documentation prepared by the environmental consultant by submitting comments to DWR and to the consultant.
- c. Share in the advance payment of costs estimated by DWR in accordance with the Cost Sharing Split.
- d. Review invoices submitted from the environmental consultant.
- e. Assist with responding to comments and organizing and holding scoping sessions, public workshops and hearings as part of the environmental compliance process.



- f. Share available environmental-related information and data with DWR and the consultant.
- g. Any information or comments shared with the environmental consultant must be provided first to DWR.
- h. Assist as requested in the development and review of task orders for work by the environmental consultant.
- i. Assist in the water rights process required for adding a point of diversion and redirection of water under DWR's water rights for the places of use in Solano and Napa Counties.
- j. Assist in analyzing the potential growth inducing impacts of the Project, including documentation to explain any proposed increase in the rate and quantity of water diversions.
- k. Provide any other assistance that DWR reasonably requests.

**7. Coordination Among SCWA, DWR, and Napa**

- a. DWR will coordinate with SCWA and Napa on activities related to the Project.
- b. After consultation with SCWA and Napa, DWR will select the environmental consultant.
- c. The Parties will meet regularly to discuss the progress of the Project. These meetings, either in person or by telephone conference, will occur approximately monthly or at times when the Parties otherwise agree to meet.
- d. The Parties will reasonably cooperate with each other, including the execution of all necessary documents and providing assistance in obtaining approvals and permits

from regulatory agencies required to perform the obligations under this Agreement  
and to carry out the purpose and intent of this Agreement.

e. The Parties will share comments on drafts of environmental documents.

**8. Estimated Project and North Bay Aqueduct Alternate Intake Facility Costs and Financing**

Section 8 a. provides a list of estimated Project costs for environmental work leading up to the filing of a Notice of Determination anticipated in May 2012. Section 8 b. provides the total estimated cost of the North Bay Aqueduct Alternate Intake Facility. These are best estimates as of this Agreement's execution date and the actual billings to SCWA and Napa may differ from these estimates.

a. Work leading to filing of Notice of Determination

<b>Project Work Item</b>	<b>Estimated Project Costs</b>
State Water Project Analysis Office - Project oversight	\$240,000
Division of Engineering (A & E Contract - RFQ process)	\$18,000
Division of Engineering (Right of Way - Entry permits/Property management)	\$1,770,000
Division of Engineering - Design (Civil, Mechanical, Electrical, Geology)	\$533,000
Division of Environmental Services - Environmental Oversight	1,900,000
Environmental Consultant	\$4,500,000
<b>TOTAL</b>	<b>\$8,961,000</b>

b. If SCWA and Napa request DWR to construct the North Bay Aqueduct Alternate Intake Facility after filing of the Notice of Determination, it is anticipated that the North Bay

Aqueduct Alternate Intake Facility will be completed in May of 2015. Total North Bay Aqueduct Alternate Intake Facility costs are estimated to be \$400 million. This estimate includes the cost of design and construction inspection (assumed to be 25 percent of total contractor payments after inflating construction costs with a 25 percent contingency) and construction of equipment, pipeline, pump station and intake structure contracts, purchase of mitigation property and purchase of easement and/or fee property rights.

c. It is anticipated that DWR will arrange for the sale of Water System Revenue bonds, pursuant to the long term water supply contract, to finance the construction of the North Bay Aqueduct Alternate Intake Project if approval is given and to reimburse SCWA and Napa for their shares of advanced funding provided to DWR to pay for Project costs described in Section 8 (a) above. Bond proceeds will be paid back to the State through an increase in SCWA and Napa's contractor payments under provisions of the Long Term Water Supply Contract.

**9. Advanced Funding**

- a. The estimated costs DWR expects to incur in calendar year 2008 for Project work is five hundred and fifty thousand dollars (\$550,000). These costs include staff costs, costs for preparing and publicizing a request for qualifications for an environmental consultant, costs for securing entry permits, engineering (civil, mechanical, electrical and geology), environmental oversight and payments to an environmental consultant. DWR shall send an invoice within thirty (30) days after the effective date of this agreement and SCWA and Napa shall each advance to DWR the estimated costs for calendar year 2008 according to the Cost Sharing Split.
- b. Before December 31, 2008, DWR will send to SCWA and Napa an invoice which breaks down the estimated costs for the Project for the period January 1, 2009

through June 30, 2009. By February 1, 2009, SCWA and Napa shall each pay to DWR the estimated costs for this period, according to the Cost Sharing Split, less any unspent funds remaining from the previous calendar year.

- c. Before May 1, 2009, DWR will provide to SCWA and Napa a breakdown of estimated costs for the Project for Fiscal Year 2009-2010 (July 1, 2009 through June 30, 2010) and send an invoice to SCWA and Napa. By August 1, 2009, SCWA and Napa shall each advance to DWR the costs forecasted for the Fiscal Year 2009-2010, less any unspent advanced funds from the previous fiscal year, in accordance with the Cost Sharing Split.
- d. Before May 1 of all future fiscal years during the term of this Agreement, DWR shall send to SCWA and Napa an invoice which breaks down the estimated costs for the Project for the following fiscal year and shall send an invoice to SCWA and Napa. By August 1<sup>st</sup> of the next fiscal year, SCWA and Napa shall each advance to DWR the costs identified for the next fiscal year, less any unspent advanced funds from the previous fiscal year, in accordance with the Cost Sharing Split.
- e. Should the calendar or fiscal year cost projections made by DWR prove to be insufficient to cover costs, DWR will submit to SCWA and Napa a revised estimate and an invoice for these costs. SCWA and Napa shall each pay the invoice, in accordance with their Cost Sharing Split, within thirty (30) days of receipt.
- f. When the Project is completed, or upon termination of this Agreement, whichever comes first, DWR will prepare a final invoice reflecting any unpaid Project costs and remaining advanced funds. SCWA and Napa shall each pay all outstanding Project costs to DWR, in accordance with their Cost Sharing Split, within sixty (60) calendar

days of receiving the final invoice. DWR shall return any remaining unspent advanced funds to SCWA and Napa within sixty (60) calendar days in accordance with the Cost Sharing Split.

- g. The DWR shall provide quarterly expenditure reports to SCWA and Napa as to the amount of funds collected and expended by DWR during the term of this Agreement.

**10. Repayment of Funding**

- a. If the new North Bay Aqueduct Alternate Intake Facility is approved for construction, advanced funding provided by SCWA and Napa under this Agreement is intended to be reimbursed to SCWA and Napa equal to the amounts advanced by each of them from proceeds of a Water System Revenue Bond sale, if a bond sale occurs. Such a Revenue Bond sale would also fund further planning, design, and construction. As required under their long term water supply contracts with DWR, SCWA and Napa would each pay an increase in each Party's transportation charge and Water System Revenue Bond Surcharge, reflecting the actual costs of developing, financing, building, and operating the new Facility.
- b. DWR shall not be obligated to reimburse SCWA or Napa for any funds contributed for the Project if the North Bay Aqueduct Alternate Intake Facility is not built.
- c. Grant funding used for the Project, including but not limited to Proposition 84, will not be reimbursed. DWR makes no guarantee that grant funding will be available.

**11. Payments, Notices Or Other Communications**

- a. All payments, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if:
  - (i.) served personally on the Party to whom notice is to be given; (ii.) sent by

electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii.) on the third day after mailing, if mailed to the Party to whom payment, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Chief of State Water Project Analysis Office

Department of Water Resources  
State Water Project Analysis Office  
Department of Water Resources  
1416 Ninth Street, Room 1620  
Post Office Box 942836  
Sacramento, California 94236-0001

SCWA: General Manager  
Solano County Water Agency  
Post Office Box 349  
Elmira, California 95625-0349

NAPA: District Engineer  
Napa County Flood Control and Water Conservation District  
1195 Third Street, Suite 201  
Napa, California 94559

b. The time for providing any payments, notices, or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement.

## 12. Early Termination

a. SCWA and/or Napa may terminate this Agreement at any time without cause by providing DWR no less than 90 days written notice of termination. Neither party shall require approval from the other for termination. If both SCWA and Napa terminate, all Parties shall

cease making new commitments for spending on the Project and shall wind down any work then underway in a manner designed to minimize costs. DWR shall pay any outstanding invoices and pay any remaining committed costs of the Project using funds previously advanced by SCWA and Napa. SCWA and/or Napa shall pay DWR for any expenses DWR incurred as a result of binding commitments DWR made in connection with obligations under the Agreement. DWR shall submit documentation of those expenses to SCWA and/or Napa. DWR shall return the balance of any funding advanced, plus interest, less expenses incurred before termination.

b. Should only SCWA or Napa terminate its participation in this Agreement, DWR shall reimburse the terminating Party for any funding it advanced, plus interest at the Pooled Money Investment Account rate then in effect, less its share of expenses incurred or committed prior to the termination. By written agreement, the non-terminating party can assume the other party's obligations under this agreement and continue the Project, as may be modified, with DWR.

**13. Amendments**

This Agreement may be amended or modified only by a subsequent written agreement approved and executed by the Parties.

**14. Binding on Successors and Assignments**

This Agreement will bind and inure to the benefit of the respective successors and assigns of the Party, except that, none of the obligations of the Parties set forth in this Agreement will be assigned without the prior, written approval of the other Party, which approval will not unreasonably be withheld.

**15. Applicable Law.**

This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.

16. Long Term Water Supply Contracts

Nothing in this contract shall modify the long term water supply contracts among the Parties.

17. Complete Contract.

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives,

have executed this Agreement on the last date set forth below.


8/31/08

Approved as to legal form

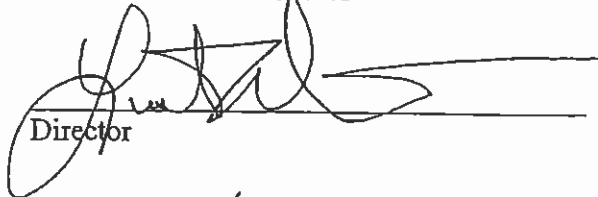
State of California

and Sufficiency

DWR of Water Resources

cc 

Chief Counsel  
DWR of Water Resources

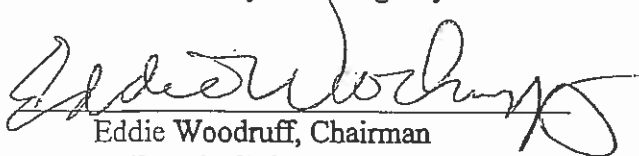


Director

10/1/08  
Date

Solano County Water Agency

Napa County Flood Control  
and Water Conservation District



Eddie Woodruff, Chairman  
Board of Directors

9/11/08

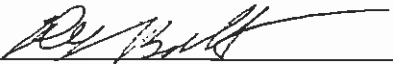
Date

Brad Wagenknecht, Chairperson  
Board of Directors

Date

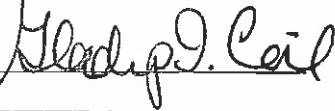


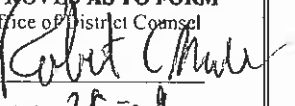
NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT,  
a special district of the State of California

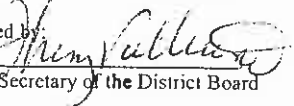
By:   
DEL BRITTON,  
Chairperson of the Board of Directors

8-4-09  
Date

ATTEST: GLADYS I. COIL  
Secretary of the District Board

By: 

APPROVED AS TO FORM Office of District Counsel
By: <u></u>
Date: <u>7-28-09</u>

APPROVED BY THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
Date: <u>8-4-09</u>
Processed by: <u></u>
Deputy Secretary of the District Board







**NOTICE TO STATE WATER PROJECT CONTRACTORS****Number:** 10-01**Date:** JAN 4 2010**Subject:** 2010 Turn-Back Water Pool Program**From:**   
Raphael A. Torres, DEPARTMENT OF WATER RESOURCES

The Department of Water Resources (DWR) is offering a 2010 Turn-Back Water Pool Program pursuant to Article 56 of the Water Supply Contracts. This Program is available to interested State Water Project (SWP) Contractors who have signed the Monterey Amendment, and is subject to the attached terms and conditions (Attachment A).

DWR will administer two Turn-Back Water Pools: Pool A and Pool B. A SWP Contractor may choose to sell or buy Turn-Back Pool Water in one or both of these Pools. This Program is separate from any other water sale or purchase program that DWR may administer during 2010.

To participate in the 2010 Turn-Back Water Pool Program and be on the notification list, a Contractor must complete, sign and date the commitment (Attachment A) attached to this notice and return all pages of the attachment to Lincoln King, State Water Project Analysis Office, Department of Water Resources, Post Office Box 942836, Sacramento, California 94236-0001. To meet the commitment due date, Contractor's can email signed notices to Mark Risney [mrисney@water.ca.gov](mailto:mrисney@water.ca.gov), as long as the original notice is also mailed. A schedule for this Program (Attachment B) is included as a reference.

If you have any questions or need additional information about this Program, please contact Mark Risney at (916) 653-8127 or Lincoln King at (916) 653-4389.

Attachments

**Attachment A**  
**2010 Turn-Back Water Pool Program**

**Terms and Conditions**

1. The 2010 Turn-Back Water Pools are subject to Article 56 of the Water Supply Contracts.
2. A SWP contractor may sell allocated 2010 Table A water that it will not use, provided that: (1) the contractor has not elected to store project water outside of its service area in 2010, and (2) the contractor has not elected to carry over Table A water from 2009 pursuant to Article 12(e) or Article 56 of its Water Supply Contract.
3. Sales and purchases of Turn-Back Water Pool shall not affect the 2010 allocation of Table A water to any SWP contractors.
4. Turn-Back Pool water purchased by a contractor will be delivered to the contractor's service area from the SWP facilities, or as otherwise arranged, consistent with the contractor's Water Supply Contract.
5. DWR may limit or delay delivery of Turn-Back Pool water due to either (a) limits on the operational capacity of SWP facilities, or (b) changing operational conditions.
6. Delivery priority of Turn-Back Pool water will be the same as for Table A water (Priority 1), as described in Article 12(f) of the long-term Water Supply Contracts so long as the total amount of project water does not exceed the contractor's 2010 Table A amount. Delivery priority of Turn-Back Pool water in excess of the contractor's Table A amount will be Priority 6.
7. Contractor's selling Turn-Back Pool water shall submit a revised water delivery schedule to DWR reflecting changes due to the sale of their water. Likewise, a contractor purchasing Turn-Back Pool water should submit its revised delivery request to DWR as soon as possible after being allocated the Turn-Back Pool water. All water schedules shall be prepared in accordance with Article 12 of the contractor's Water Supply Contract.
8. Turn-Back Pool water may be stored outside of the purchasing contractor's service area for later use inside of the contractor's service area consistent with Article 56. The location of this storage may be inside or outside of the SWP service area, but it must be consistent with water rights permits for the SWP.
9. The 2010 Turn-Back Water Pool Program shall not be a precedent for future programs.

10. A SWP contractor offering to sell Turn-Back Pool water in either Pool A or in Pool B must submit a completed and signed copy of this Agreement for each Pool as appropriate (see last two pages of this Agreement). Sellers shall indicate the amount of water they want to sell in Pool A and/or Pool B using the chart provided with the signature page. DWR must receive a signed Agreement on or before 12:01 p.m., February 15, 2010 for Pool A water sales and on or before 12:01 p.m., March 15, 2010 for Pool B water sales. It is acceptable to submit a signature page by e-mail to Mark Risney at [mrisney@water.ca.gov](mailto:mrisney@water.ca.gov) and Lincoln King at [lking@water.ca.gov](mailto:lking@water.ca.gov) in order to meet the deadline; however, an original signature must be submitted as soon as possible afterwards.
11. A SWP contractor offering to buy Turn-Back Pool water in either Pool A or in Pool B must submit a completed and signed copy of this Agreement for each Pool as appropriate (see last two pages of this Agreement). Buyers shall indicate the amount of water they want to purchase in Pool A and/or Pool B using the chart provided with the signature page. DWR must receive a signed Agreement on or before 12:01 p.m., March 1, 2010 for Pool A water purchases and on or before 12:01 p.m., April 1, 2010 for Pool B water purchases. It is acceptable to submit a signature page by e-mail to Mark Risney at [mrisney@water.ca.gov](mailto:mrisney@water.ca.gov) and Lincoln King at [lking@water.ca.gov](mailto:lking@water.ca.gov) in order to meet the deadline; however, an original signature must be submitted as soon as possible afterwards.
12. The price for Pool A water will be \$19.05 (50 percent of the 2010 Delta Water Rate) for each acre-foot of water purchased or sold. Also, the price for Pool B water will be \$9.52 (25 percent of the 2010 Delta Water Rate) for each acre-foot of water purchased or sold. In addition to the charge per acre-foot, the purchasing contractor shall pay DWR the 2010 Transportation Variable Operations, Maintenance, Power, and Replacement Component charges and the Off-Aqueduct Power Facilities Charges for Turn-Back Pool water delivered, plus any incremental costs identified by DWR as described in Article 56(d)(7).
13. DWR will notify all participating contractors by e-mail after the current sales and allocation information at each stage of the Program. These notifications will be sent out within three working days of each of the above milestone dates.
14. DWR will invoice each purchasing contractor for the purchase price of the water, with payment due 30 days from the date of the invoice. Likewise, DWR will pay each selling contractor for their water within 30 days after DWR has received payment from all the purchasers.
15. All sales and purchases through Pool A are irrevocable even if DWR reduces Table A allocations on or after February 15, 2010.

16. DWR will finalize the allocation of sales and purchases of Pool B water on June 1, 2010. The percentage of Table A allocations in effect on this date will determine the final amounts. Only contractors who were active participants in this Program on April 1, 2010 will be allowed to participate. No reallocation of sales or purchases will be done after June 1, 2010.
17. In the event that any water remains unsold in either Pool, the offering contractor may cancel its offer to sell its share of unsold water in writing. A cancellation letter or advance copy sent by e-mail must be received no later than 12:01 p.m., March 15, 2010 for Pool A water and by no later than 12:01 p.m., April 15, 2010 for Pool B water.
18. DWR shall decide by April 21, 2010 whether to purchase any portion of Pool A water remaining unsold on that date.



## **AGREEMENT TO SELL/PURCHASE 2010 TURN-BACK POOL WATER IN POOL A**

In order to sell or purchase Turn-Back Pool water under Article 56 of the contractor's long-term Water Supply Contracts, please fill in the information required below, sign in the space provided, and return all pages of this Attachment A to the State Water Project Analysis Office. A contractor's signature indicates acceptance of all of the terms and conditions of this Program as set forth in this Attachment A.

Purchasers of Turn-Back Pool A water may either check the following box to receive the full allocation of water offered or fill in the chart below for specific purchase amounts.

( ) We agree to purchase all available Turn-Back Pool A water.

Table A Allocation As of February 15, 2010 (Percent)	Amount to Sell (Acre-Feet)	Amount to Buy (Acre-Feet)
5		
10		
15		
20		
25		
30		
35		
40		
45		
50		
55		
60		
65		
70		
75		
80		
85		
90		
95		
100		

Authorized Representative  
Signature

\_\_\_\_\_

Agency

\_\_\_\_\_

Date

Contact Person

\_\_\_\_\_

Email

Telephone

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

\_\_\_\_\_  
Chief, State Water Project Analysis Office

## **AGREEMENT TO SELL/PURCHASE 2010 TURN-BACK POOL WATER IN POOL B**

In order to sell or purchase Turn-Back Pool water under Article 56 of the contractor's long-term Water Supply Contracts, please fill in the information required below, sign in the space provided, and return all pages of this Attachment A to the State Water Project Analysis Office. A contractor's signature indicates acceptance of all of the terms and conditions of this Program as set forth in this Attachment A.

Purchasers of Turn-Back Pool B water may either check the following box to receive the full allocation of water offered or fill in the chart below for specific purchase amounts.

( ) We agree to purchase all available Turn-Back Pool B water.

Table A Allocation As of June 1, 2010 (Percent)	Amount to Sell (Acre-Feet)	Amount to Buy (Acre-Feet)
5		
10		
15		
20		
25		
30		
35		
40		
45		
50		
55		
60		
65		
70		
75		
80		
85		
90		
95		
100		

Authorized Representative  
Signature

\_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

\_\_\_\_\_  
Chief, State Water Project Analysis Office

Agency

\_\_\_\_\_

Date

\_\_\_\_\_

Contact Person

\_\_\_\_\_

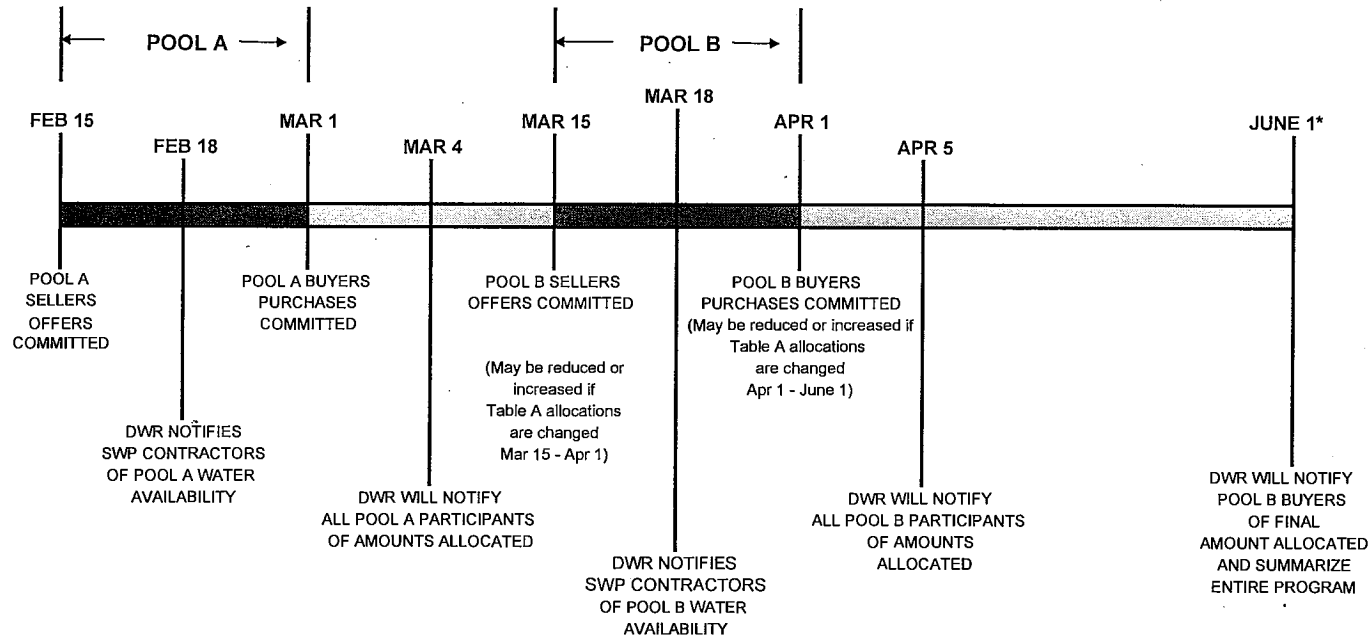
Email

Telephone

\_\_\_\_\_

## 2010 TURN-BACK POOL SCHEDULE

### Attachment B



\* The June 1 date only applies if Table A allocations have changed between April 1 and June 1. Only participants who were fully committed as of April 1 will be involved.

SWPAO  
12/29/2009







Summary:

# Final State Water Project Delivery Reliability Report, 2009

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The *State Water Project Delivery Reliability Report 2009* updates DWR's estimate of the current (2009) and future (2029) water delivery reliability of the SWP. The report is produced every two years as part of a settlement agreement signed in 2003.

The report shows that future SWP deliveries will be impacted by two significant factors. The first is significant restrictions on SWP and Central Valley Project (CVP) Delta pumping required by the biological opinions issued by the U.S. Fish and Wildlife Service (December 2008) and National Marine Fisheries Service (June 2009). The second is climate change, which is altering the hydrologic conditions in the State.

This report represents the state of water affairs if no actions for improvement are taken. It shows continued erosion of SWP water delivery reliability under the current method of moving water through the Delta. The updated analysis shows that the primary component of the annual SWP deliveries (referred to as Table A deliveries) will be less under current and future conditions, when compared to the preceding report (*State Water Project Delivery Reliability Report 2007*).

The report discusses areas of significant uncertainty to SWP delivery reliability:

- restrictions on SWP and CVP operations due to State and federal biological opinions to protect endangered fish such as delta smelt and spring-run salmon;
- climate change and sea level rise; and
- the vulnerability of Delta levees to failure due to floods and earthquakes.

As in previous reports, estimates of SWP deliveries are based upon operation simulations with DWR's CalSim II model using an extended record of runoff patterns. These patterns have been adjusted to reflect the levels of development in the source areas and, for future conditions, possible impact due to climate change and accompanying sea level rise. Potential deliveries under current conditions are estimated at the 2009 level and assume current methods of conveying water across the Delta and the current operational rules contained in the federal biological opinions. Potential deliveries under future conditions are estimated at the 2029 level and are also based on the assumptions that no changes will be made in either the way water is conveyed across the Delta or in the operational rules. The analysis of future conditions incorporates a climate change scenario from DWR's 2009 report, *Using Future Climate Projections to Support Water Resources Decision Making in California*, which represents the median effects of the 12 scenarios contained in the report.

The 2009 report shows greater reductions in water deliveries on average when compared to the 2007 report. The 2007 report incorporates the interim operation rules established by Judge Wanger in the federal court in 2007. It shows very significant reductions in SWP deliveries when compared to the 2005 report, which assumes operation rules that were less restrictive. The 2007 report shows current SWP annual Table A deliveries averaging 63% (2595 taf) of the maximum contract amount of 4,133 thousand acre-feet (taf) per year. The 2009 report shows a corresponding value of 60% (2485 taf). The 2007 report projects an annual average of 66% to 69% (2725-2850 taf) for the future condition, whereas the updated report has 60%.

Although the averages of the updated estimates are less than were estimated in the 2007 report, the annual deliveries during drier conditions are projected to be somewhat higher than estimated in the 2007 report. This is due to the updated analysis incorporating the ability of SWP contractors to save water allocated in one year for delivery in the subsequent year and because water stored upstream cannot be delivered in some years due to export restrictions and is, therefore, available in drier times. This phenomenon is illustrated in the tables and curves below.

Under current conditions, annual SWP Table A deliveries from the Delta average 60% of the maximum annual amount of 4,133 taf per year. Over the 82-year simulation period, annual SWP Table A deliveries range from 7% to 81% of the maximum amount. Over multiple-year dry periods, average annual Table A deliveries vary from 34% to 36% of the maximum Table A amount, while average annual deliveries over multiple-year wet periods range from 67 to 71% of the maximum Table A amount. Under current conditions, annual SWP Article 21 deliveries, a secondary component of annual deliveries, average 85 taf and range from 2 taf to 850 taf over the 82-year simulation period.

Under future conditions, annual SWP Table A deliveries from the Delta also average 60% of the maximum Table A amount. Over the 82-year simulation period, annual SWP Table A deliveries range from 11% to 97% of the maximum amount. Over multiple-year dry periods, average annual Table A deliveries vary from 32% to 38% of the maximum Table A amount, while average annual deliveries over multiple-year wet periods range from 72 to 93% of the maximum Table A amount. Under future conditions, annual SWP Article 21 deliveries average 60 taf, ranging from 1 taf to 540 taf over the 82-year simulation period.

The *State Water Project Delivery Reliability Report, 2009* is available for public review at, <http://baydeltaoffice.water.ca.gov>. The report is an update to the *State Water Project Delivery Reliability Report, 2007* issued as final in 2008.



**Table 1. Highlighted SWP Table A delivery percent exceedence values under Current Conditions**

Exceedence	Annual SWP Table A Delivery (taf)		Change in delivery compared to 2007 report (taf)
	2007 SWP Delivery Reliability Report, Study 2007	Updated Studies (2009)	
25%	3218	2920	-298
50%	2976	2675	-301
75%	2168	2397	+229

Table 1 compares the probability estimates for current conditions from the 2007 report and the 2009 report. The comparison is also shown in Figure 1. The 2009 report estimates that for any given year in the future,

- There is a 25% chance that SWP deliveries will be at or above 2,920 taf.
- There is an equal chance (50%) that SWP deliveries will be above or below 2,675 taf. (Illustrated by the dotted lines.)
- There is 75% chance that SWP deliveries will be above 2,397 taf. Another way to state this is that there is a 25% chance that deliveries will be below this value.

**Figure 1 SWP Table A delivery probability under Current Conditions**

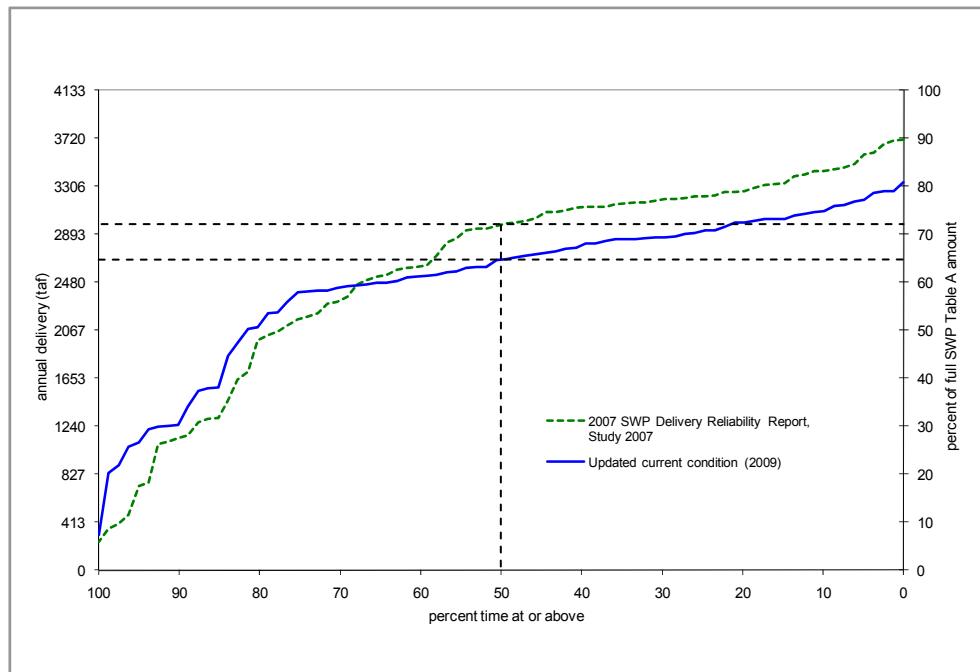


Figure 1 is a plot of all the annual estimates of SWP deliveries in ascending order, with the smallest value on the left and largest on the right.

**Table 2 Highlighted SWP Table A delivery percent exceedance values under Future Conditions**

Exceedence	Annual SWP Table A Delivery (taf)		Change in delivery in updated studies compared to 2007 report (taf)
	2007 SWP Delivery Reliability Report, Study 2027 <sup>1</sup>	Updated Studies (2029)	
25%	3687 – 3815	2915	-772 to -900
50%	2967 – 3205	2596	-371 to -609
75%	1860 – 2077	2137	+60 to +277

1/ Range in value reflects four modified scenarios of climate change.

Table 2 compares the probability estimates for future conditions from the 2007 report and the 2009 report. The 2009 report estimates that for any given year in the future,

- There is 1 chance in 4 (25% chance) that SWP deliveries will be at or above 2,915 taf.
- There is an equal chance (50% chance) that SWP deliveries will be above or below 2,596 taf. (Illustrated by the dotted lines in Figure 2.)
- There is 75% chance that SWP deliveries will be above 2,137 taf. Another way to state this is that there is a 25% chance that deliveries will be below this range.

**Figure 2 SWP Delta Table A delivery probability under Future Conditions**

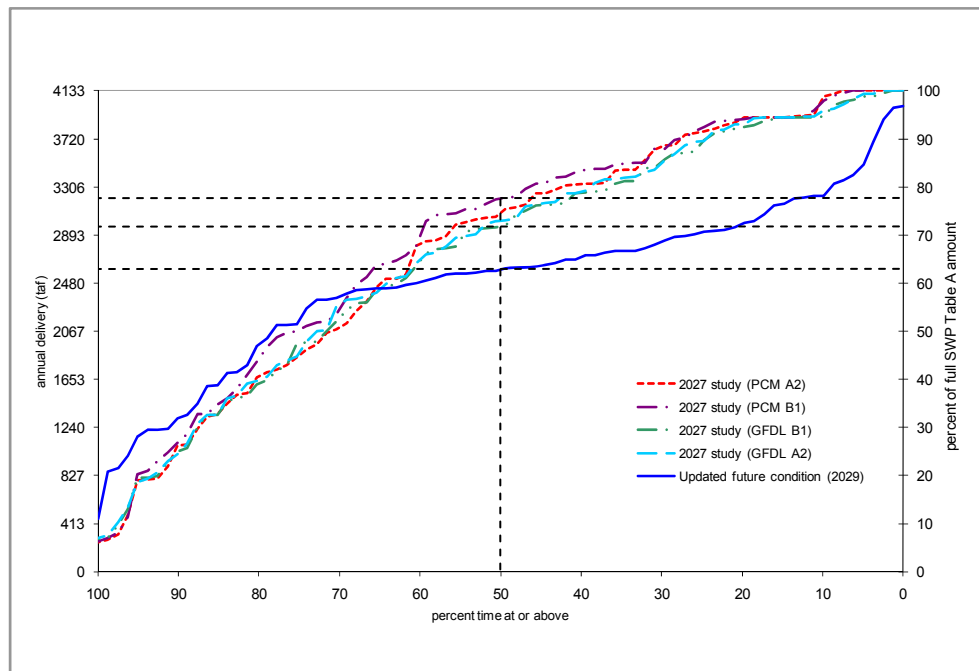


Figure 2 is the corresponding plot of all the annual delivery estimates for the future condition.









## Mary Grace Pawson

---

**From:** Steve Moore [smoore@cityofamericancanyon.org]  
**Sent:** Thursday, April 14, 2011 11:42 AM  
**To:** Toni Bertolero; Mary Grace Pawson; Cristina Goulart  
**Subject:** FW: Montalcino at Napa Project / HCV Pacific Partners LLC -- City of American Canyon 2005 UWMP Update  
**Attachments:** SCAN4297\_000.pdf  
**Categories:** Filed by Newforma

UWMP comment, see below.  
Steve

-----Original Message-----

**From:** Tom Krehbiel [[mailto:T\\_krehbiel@hcvpartners.com](mailto:T_krehbiel@hcvpartners.com)]  
**Sent:** Monday, March 07, 2011 6:15 PM  
**To:** Steve Moore  
**Cc:** Randy Verrue; Michael Throne  
**Subject:** FW: Montalcino at Napa Project / HCV Pacific Partners LLC -- City of American Canyon 2005 UWMP Update

> Dear Steven,  
>  
> HCV is in receipt of your letter dated February 28, 2011 received  
> March 7th (scan copy attached). I am responding as the project manager  
> that HCV would like the opportunity to provide input to your office  
> during the update of the City of American Canyon's 2005 Urban Water  
> Management Plan (UWMP).  
>  
> As you are aware, the Montalcino at Napa project is within the City of  
> American Canyon's water system service area. The project will be  
> constructed on property HCV owns and leases west of Devlin Road, just  
> north of the Napa Airport. The City of American Canyon was previously  
> identified during the project FEIR process as the water provider for  
> the project. Additionally, Napa Sanitation District was identified as  
> the provided of recycled water for the golf course and project  
> landscaping.  
>

We initiated construction but were stopped due to the constraints caused by the capital markets. We remain fully committed to the construction of Montalcino and there appears to be some interest by lenders to allow the project to secure financing in the near future . An example of that commitment is HCV has executed a long-term land lease and recycle water agreement with NSD regarding the land for the golf course and the use of recycled water during the construction of the project and supplying the future reclaimed water needs of the golf course and project landscaping.

> Would you like to schedule a meeting at your office to discuss the  
> water needs of the project for inclusion in the update of the 2005  
> UWMP? I can be reached at our San Francisco office at 415-249-0800 or  
> cell number 925-766-9504 or email: [tkrehbiel@hcvpartners.com](mailto:tkrehbiel@hcvpartners.com)  
>  
>  
> Regards,

>  
> Thomas Krehbiel  
> Vice President - Project Manager  
> HCV Pacific Partners LLC  
> 222 Kearny Street, Suite 310  
> San Francisco, CA 94108-4528  
>  
>  
>  
> cc Michael W. Throne, Public Works Director City of American Canyon  
> Randall Verrue, HCV Pacific Partners LLC  
>  
>  
>  
> <<SCAN4297\_000.pdf>>









# State Water Resources Control Board

Linda S. Adams  
Agency Secretary

**Division of Financial Assistance**  
1001 I Street • Sacramento, California 95814 • (916) 341-5700 FAX (916) 341-5707  
Mailing Address: P.O. Box 944212 • Sacramento, California 94244-2120  
Internet Address: <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

JUN 24 2009

CERTIFIED MAIL NO.: 7003-3110-0003-0772-6606  
Return Receipt Requested

Mr. Charles Beck  
Public Works Director  
City of American Canyon  
4381 Broadway Street, Ste. 201  
American Canyon, CA 94503

Dear Mr. Beck:

FACILITIES PLAN APPROVAL (FPA) FIRST AMENDMENT; CITY OF AMERICAN CANYON (CITY), CONSTRUCTED RECYCLED WATER DISTRIBUTION SYSTEM PROJECT (PROJECT), WATER RECYCLING FUNDING PROGRAM (WRFP), PROJECT NO. 3206-030

In accordance with the State Water Resources Control Board's (State Water Board) *Water Recycling Funding Program Guidelines* last amended July 15, 2008, (Guidelines), the Division of Financial Assistance (Division) approves this first amendment to the FPA for the subject Project. This approval supersedes the previous FPA, dated January 24, 2006.

This amended FPA for the City's Project is based on the following determinations:

1. A Financial Assistance Application package dated January 21, 2005, and subsequent information was found to be in compliance with Section III.E of the Guidelines.
2. The Project met the requirements for placement in Category I of the WRFP Competitive Project List adopted January 20, 2005.
3. The Project will augment the state water supplies by replacing the use of potable water from the state water supply with recycled water.
4. The Project will provide a benefit to the Delta by reducing the pumping from the Delta.
5. Division staff determined that the City does not owe any outstanding Water Rights fees to the State Water Board as of May 27, 2009.
6. An Authorized Representative Resolution was submitted and determined to be in compliance with Division policy and the WRFP Guidelines.
7. State Water Board staff reviewed the environmental documents and determined that the Project will not result in any significant adverse water quality impacts. Special conditions will be added to the WRFP Grant Agreement to address compliance with the federal Endangered Species Act and the biological measures in the City's 2005 Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Plan (MMP).

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In 1998, the City prepared an Environmental Impact Report (State Clearinghouse (SCH) No. 1997092091) for its wastewater treatment disposal facilities and reclaimed water distribution piping. The City prepared a Tier II IS/MND for the Project in 2003. In 2005, the City prepared another IS/MND (SCH No. 2005112091) for the Project to address a change in the storage tank location. The City approved the Project and adopted the 2005 IS/MND and an MMP on February 2, 2006, and filed a Notice of Determination with the Napa County Clerk on February 10, 2006, and with the Governor's Office of Planning and Research on February 15, 2006.

8. A construction finance plan has been submitted in accordance with the Guidelines.
9. The City has submitted initial recycled water market assurances in the form of a mandatory use ordinance.
10. The City has certified that it is a signatory to the California Urban Water Conservation Council's Memorandum of Understanding regarding Urban Water Conservation in California.
11. On March 2, 2006, the Deputy Director of the Division (formerly the Chief of the Division) approved a Preliminary Funding Commitment (PFC) for the Project in Division Item No. DFA 2006-12.
12. On July 2, 2007, the Assistant Deputy Director of the Division approved the Proposition 50 Water Recycling Grant Program Agreement between the State Water Board and the City.
13. On May 18, 2009, the City submitted a deviation request for the Project and a notice of change in the City's authorized representative.
14. The change in the unit cost of recycled water decreased from \$1,476 per acre foot (AF) to \$1,343 per AF under the revised project. The revised unit cost of recycled water is predicated upon the City providing assurances that the new Newell Preserve (Preserve), will be developed and delivering up to 333<sup>1</sup> ACY recycled water by 2015. Specific user assurances are defined under CONDITIONS OF APPROVAL paragraph 5, in this letter. If the City is unable to provide sufficient user assurances for the Preserve, then the delivery remains at 333 acre-feet per year (ACY), and the unit cost of recycled water increases to \$2,205 per AF under the revised Project.

#### AMENDED PROJECT DESCRIPTION

The purpose of the Project is to construct an operable recycled water distribution system. The Project will provide approximately 666 AFY of recycled water to 45 existing customers within the City's service area. A summary of the 45 recycled water customers and their estimated demand is included in Enclosure 1.

**Table 1 – Connection Schedule**

Year	Amount of Recycled Water Added (AF/yr)	Customers Connected
<b>2010</b>	333	44
<b>2015</b>	333	1
<b>Total</b>	<b>666</b>	<b>45</b>

<sup>1</sup> Eligible project capacity under Section III I 1 of the Guidelines.

The Projects' components include: 1) Approximately 18,416 linear feet (LF) of 6-inch to 20-inch distribution system piping, 2) a one million gallon (MG) reservoir to provide for the delivery of recycled water to urban users in and adjacent to the City, 3) installation of a recycled water meter and a third recycled water pump at the City's existing water reclamation plant (WRP).

The proposed Project is being constructed in five segments. Once completed, these five project segments will convey the 666 AFY of recycled water to the recycled water customers. The Project segments are as follows:

#### Project Segment IB

The Wetlands Edge pipeline involved the installation of 8,094 LF of pipeline running from the existing recycled water pipeline near the treatment plant to the southern area of the City. The pipeline was constructed in 2005/06 in partnership with the Napa Vallejo Waste Management Agency which was constructing a leachate line along the same alignment. Because of the hydraulics of the recycled water system, this facility cannot deliver water to customers until the recycled water storage tank (Project Segment IIC) is completed. This segment is completed.

#### Project Segment IIA

The Commerce Blvd. pipeline is a portion of the Green Island Road Project (Segment IID) and involved the installation of approximately 1,000 LF of pipeline which connects to the northerly termination of the Wetlands Edge pipeline and runs to Green Island Road. Because of the hydraulics of the recycled water system, this facility cannot deliver water to customers until the recycled water storage tank (Project Segment IIC) is completed. This segment is completed.

#### Project Segment IIB

The American Canyon Road pipeline involves the installation of 2,480 LF of pipeline connecting the existing recycled water distribution systems that lie east and west of Highway 29. Because of the hydraulics of the recycled water system, this facility cannot deliver water to customers until the recycled water storage tank (Project Segment IIC) is completed. The scheduled start of construction date for this segment is August 29, 2009.

#### Project Segment IIC

The Recycled Water Storage Tank Project includes the installation of the one MG reservoir that will allow the deliveries of recycled water to Project Segments IB, IIA, IIB and IID. The scheduled start of construction date for this segment is August 3, 2009.

#### Project Segment IID

The Green Island Road Project involves the installation of 6,842 LF of pipeline, a recycled water meter and a third recycled water pump (in an existing pump station) at the WRP. The recycled water meter and additional recycled water pump allow the City to measure its wholesale deliveries and assure compliance with the reliability and redundancy requirements of Title 22 of the California Code of Regulations. The Green Island Road pipeline develops recycled water infrastructure along the northern edge of the City. The scheduled start of construction date for this segment is November 4, 2009.

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### PROJECT ELIGIBILITY

1. Division staff has determined the items listed below are eligible for WRFP grant funding. Detailed Project component eligibility and eligible component size will be determined during the review of the Plans and Specifications (P&S) and will be consistent with this FPA letter.
  - A. The eligible design flow in terms of recycled water delivery is 666 AFY to serve the users listed in Enclosure 1. The eligible capacity of Project components shall be based on this design flow and the use characteristics of the listed users.
  - B. Construction cost of recycled water treatment, storage, and distribution systems described below:
    - Approximately 18,416 lineal feet of recycled water distribution pipeline and appurtenances within the City's jurisdiction
    - Construction cost for up to a one MG storage tank
    - One wholesale recycled water meter and one recycled water pump (to be installed in an existing pump station)
  - C. Necessary site preparation, access or security improvements
  - D. Necessary recycled water service lines and meters located within the public right-of-way
2. The following items are not eligible for grant funding:
  - A. Any items that replace/repair facilities that were previously constructed with Clean Water Grant monies;
  - B. Construction that occurred prior to January 1, 2004;
  - C. Temporary job-site office trailers;
  - D. Computer and office equipment for City or contractor staff;
  - E. Costs of land, easements and rights of way;
  - F. Costs of retrofitting and modifications on user sites;
  - G. Costs associated with operation and maintenance, extended warranties, and earthquake insurance;
  - H. Costs of mitigation and/or clean up activities at sites where hazardous materials are found;
  - I. Construction contingencies;
  - J. Construction change orders and claims;
  - K. Costs of applying for the WRFP grant; and
  - L. Generally ineligible Project items as provided in WRFP funding guidelines.

The estimated total construction cost of the Project is \$7,432,235. The estimated eligible construction cost is \$2,136,770. In accordance with the State Water Board WRFP Guidelines, up to 25 percent of the eligible construction cost, plus a 15 percent allowance for cost of design, legal, construction management, and engineering costs during construction, may be funded with this WRFP grant. 25 percent of the eligible construction cost is \$1,858,061; the 15 percent allowance cost is \$278,709. Therefore, the maximum grant amount is \$2,136,770.

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PROJECT MILESTONES

The Project is being constructed in five segments. The following proposed milestone dates reflect each proposed segment.

## Overall Project Milestones

<u>Milestone</u>	<u>Date</u>
<b>Submit Loan/Grant Application</b>	<b>January 21, 2005 (completed)</b>
<b>City Acceptance of the FPA</b>	<b>February 1, 2006 (complete)</b>
Issue Project Preliminary Funding Commitment	February 17, 2006 (complete)
Execute Grant Agreement	March 2, 2006 (complete)
<b>Quarterly project reports</b>	<b>March 2, 2006 - March 31, 2010<sup>1</sup></b>
<b>City Acceptance of 1<sup>st</sup> Amended FPA</b>	<b>June 22, 2009</b>
<b>Submit Final Market Assurances</b>	<b>August 1, 2009</b>
<b>Initiate Facilities Operation</b>	<b>March 31, 2010</b>
<b>Submit Final Grant Payment Request</b>	<b>April 30, 2010</b>
<b>Submit Final Project Summary Report</b>	<b>July 31, 2010</b>
<b>Submit Project Performance Certification and Performance Report</b>	<b>March 31, 2011</b>
<b>Submit Annual Operations Report for 5-years</b>	<b>February 28, 2011-2015</b>

Normal Font – State Water Board/ Division Activity

**Font – Agency Activity**

1 - The City will submit a quarterly report summary from the beginning of the contract to March 31, 2009, and then quarterly thereafter

Segment IB - Wetlands Edge Pipeline Project (this segment is complete and is included for retroactive eligibility determination).

<u>Milestone</u>	<u>Date</u>
Initiate Construction (Notice-to-proceed)	June 15, 2005 (complete)
Complete Construction	September 15, 2005 (complete)
Submit Final Plans & Specifications (P&S) and Notice of Award <sup>1</sup>	June 4, 2009 <sup>1</sup>

1 – P&S submitted for retroactive eligibility determination



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## Segment IIA – Commerce Boulevard Pipeline.

<u>Milestone</u>	<u>Date</u>
Submit Final P&S and Notice of Award	July 15, 2005 (complete)
Advertise for bids	December 19, 2006 (complete)
Submit Notice of Award	February 2007 (complete)
Initiate Construction	February 2007 (complete)
Submit Construction Status Reports	Quarterly (complete)
Complete Construction	June 2007 (complete)

## Segment IIB - American Canyon Road Pipeline.

<u>Milestone</u>	<u>Date</u>
Submit Final P&S	April 30, 2009 (complete)
Advertise for bids	June 8, 2009
Submit Notice of Award	August 3, 2009
Initiate Construction	August 3, 2009
Submit Construction Status Reports	Quarterly
Complete Construction	November 30, 2009

## Segment IIC – Recycled Water Storage Tank.

<u>Milestone</u>	<u>Date</u>
Submit Final P&S	May 22, 2009 (complete)
Advertise for bids	June 4, 2009 (complete)
Submit Notice of Award	July 15, 2009
Initiate Construction	August 3, 2009
Submit Construction Status Reports	Quarterly
Complete Construction	March 31, 2010



Segment IID – Green Island Road Pipeline recycled water meter and recycled water pump.

<u>Milestone</u>	<u>Date</u>
Submit Final P&S	September 15, 2009
Advertise for bids	October 1, 2009
Submit Notice of Award	November 3, 2009
Initiate Construction	November 13, 2009
Submit Construction Status Reports	Quarterly
Complete Construction	February 28, 2010
Initiate Facilities Operation	March 31, 2010

These dates are estimates and are subject to change, however, all construction must be completed by March 31, 2010. This schedule does not supersede any regulatory enforcement schedule. Schedules must be compatible with requirements of the San Francisco Bay Regional Water Quality Control Board enforcement actions related to the proposed Project. Special attention to the Project Milestone schedule is critical. Please contact the Division Project Manager immediately upon any changes to the above dates.

#### CONDITIONS OF APPROVAL

This FPA first amendment is conditional upon the following:

1. The approval includes only the Project described herein and does not include any associated projects that may have been referred to in the Project documents or supplemental submittal. This approval does not guarantee that a grant will be awarded for any subsequent project that may be necessary to assure that the approved Project is functional.
2. In accordance with the federal Endangered Species Act, the City shall abide by the conservation and avoidance measures identified in the Biological Opinion from the U.S. Fish and Wildlife Service for callippe silverspot butterfly and California red-legged frog. The City shall also abide by the mitigation measures identified in the City's 2005 Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Plan for the Project to avoid potential adverse Project effects on California red-legged frogs and special status birds. These measures will be included as Special Conditions in Exhibit D of the City's WRFPP Grant Agreement.
3. Title 13, Chapter 13.10 of the City's municipal code addresses new water and sewer connections and services. The code specifically directs new users to irrigate areas with recycled water whenever available. Furthermore, the code directs all new construction to abide by the City's Zero Water Footprint Policy (adopted October 23, 2007). The code does not constitute a mandatory use ordinance containing the requirements of Appendix G of the Guidelines. The City committed to adopting a Mandatory Use Ordinance by the end of July 2009. A final Mandatory Use Ordinance containing the requirements in Appendix G of the Guidelines shall be submitted to the Division by August 1, 2009.



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Mr. Charles Beck

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4. The City completed construction of the Wetlands Edge Road Pipeline in September 2005. The City initially determined that this segment was ineligible for retroactive funding, as the construction specifications did not include the State Water Board's boilerplate. The City wants to demonstrate funding eligibility for the Wetlands Edge Road Pipeline by showing that the construction specifications are substantially similar to the State Water Board boilerplate. The funding eligibility of the Wetlands Edge Road Pipeline is conditional upon the City demonstrating substantial agreement between the construction specifications and the State Water Board's boilerplate by August 31, 2009.
5. The City wants to include the Newell Preserve as a new future user of recycled water. In its May 26, 2009, letter to the State Water Board, the City states that it plans to deliver up to 400 ACY of water to the preserve by 2015. Inclusion of this future demand increases the eligible volume of the City's recycled water storage tank and hence the eligible construction cost of this tank. The grant amount will be reduced accordingly if the City is unable to qualify the Preserve as an eligible future demand. In order for the State Water Board to include the future Newell Preserve in the eligibility determination of the recycled water storage tank, the City must provide documentation of future connections consistent with Appendix G of the Guidelines. Specifically, given the current uncertain economic climate with respect to development and growth, the City must provide assurances that the Preserve will be developed and will provide a recycled water demand of up to 333<sup>2</sup> ACY by 2015, solely through planned City revenues and state or federal funding without reliance upon future developer support.
6. Copies of the notifications to the users subject to the mandatory use ordinance or policy, a statement of whether any notified users appealed the conditions of recycled water use, and documentation showing the disposition of any appeals are to be submitted to the Division prior any disbursement of grant agreement funds.
7. When the Project begins operation, it will be monitored for progress in delivering recycled water. The City shall submit annual reports for five years after the first year of operation. These reports shall contain information on the actual recycled water delivered each calendar year and be submitted by the end of February.

This letter constitutes a Final Staff Decision. To expedite this process, please notify the Division's Project Manager immediately in writing if you agree with this letter, so the process of amending the City's grant may be initiated.

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<sup>2</sup> Eligible project capacity under Section III 1.1 of the Guidelines.

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If you are **NOT** in agreement, then you must request a Final Division Decision **within ten working days** from the date of this letter. Your request should be specific on the items of disagreement and suggest the exact changes with which you would agree. Please send the request to:

Ms. Barbara L. Evoy, Deputy Director  
Division of Financial Assistance  
P. O. Box 944212  
Sacramento, CA 94244-2120

Please contact your Project Manager, David Balgobin, at (916) 341-6914, or DBalgobin@waterboards.ca.gov if you have any questions or comments regarding this letter.

Sincerely,



James Maughan, Assistant Deputy Director  
Division of Financial Assistance

Enclosure

cc: Ms. Mary Grace Pawson  
Winzler & Kelly Consulting Engineers  
495 Tesconi Circle  
Santa Rosa, CA 95401

Mr. Richard Condit (w/enc.)  
San Francisco Bay Regional  
Water Quality Control Board  
1515 Clay St. Suite 1400  
Oakland, CA 94612



Enclosure 1  
City of American Canyon Recycled Water Project

WRFP Project No. 3206-030  
Grant Agreement No. 05-720

Segment	Segment Name	RWID	ACY	USER NAME	USER TYPE (C,E,F or NE) <sup>1</sup>	Total Phase ACY	Number eligible users	Eligible Project Capacity total ACY
IB	Wetlands Edge Pipeline	401A	11	Wetlands Edge Road	E			
IB	Wetlands Edge Pipeline	222	5	Gadwell Park	E			
IB	Wetlands Edge Pipeline	201	24	American Canyon Community Park	E			
IB	Wetlands Edge Pipeline	101	17	Donaldson Way School	E			
IB	Wetlands Edge Pipeline	102	11	American Canyon Middle School	E			
IB	Wetlands Edge Pipeline	404	1	The Preserve Park	E			
IB	Wetlands Edge Pipeline	401B	5	Wetlands Edge Road	E			
IB	Wetlands Edge Pipeline	402A	2	Right of Way	E			
IB	Wetlands Edge Pipeline	402B	8	Right of Way	E			
IB	Wetlands Edge Pipeline	207	1	Stand Park	E			
IB	Wetlands Edge Pipeline	203	8	Kimberly Park	E			
IB	Wetlands Edge Pipeline	402C	5	Rights of Way	E	98	12	98
IIA	Commerce Blvd. Pipeline	409	4	Mezzetta Court Streetscaping	E			
IIA	Commerce Blvd. Pipeline	600	6	Polka Beverages Landscaping	E			
IIA	Commerce Blvd. Pipeline	413	6	Commerce Blvd & Hanna Drive Streetscapes	E			
IIA	Commerce Blvd. Pipeline	413	6	Commerce Blvd & Hanna Drive Streetscapes	E			
IIA	Commerce Blvd. Pipeline	414	2	Jim Oswald Way Streetscaping	E	24	5	24
IIB	American Canyon Pipeline	505	2	Canyon Manor Apartments	E			
IIB	American Canyon Pipeline	500	4	Safeway Plaza	E			
IIB	American Canyon Pipeline	202	8	Northampton Park	E			
IIB	American Canyon Pipeline	502	3	Canyon Corners	E			
IIB	American Canyon Pipeline	226	1	Iron Horse Drive Playground	E			
IIB	American Canyon Pipeline	225	10	Shenandoah Drive Park	E			
IIB	American Canyon Pipeline	225	17	Shenandoah Drive Park	E			
IIB	American Canyon Pipeline	104	19	Future American Canyon Elementary School	E			
IIB	American Canyon Pipeline	227	17	Future High School Park	E			
IIB	American Canyon Pipeline	103	11	Rights of way	E			
IIB	American Canyon Pipeline	509	4	Valley Green Apartments	E			
IIB	American Canyon Pipeline	224	17	Future Elementary School Park	E			
IIB	American Canyon Pipeline	218	5	Canyon Creek	E			
IIB	American Canyon Pipeline	218	5	Canyon Creek	E			
IIB	American Canyon Pipeline	213	4	Gateway Village	E			
IIB	American Canyon Pipeline	215	6	World Marine Estates	E			
IIB	American Canyon Pipeline	408	9	Floresden Road Medians	E			
IIB	American Canyon Pipeline	405	4	Via Bellagio Medians and Streetscapes	E			
IIB	American Canyon Pipeline	208	2	Via Bellagio Park	E			
IIB	American Canyon Pipeline	407	14	La Vigne Streetscapes	E			
IIB	American Canyon Pipeline	209	5	DB/Park	E			
IIB	American Canyon Pipeline	223	32	Veterans Memorial Park	E	199	22	199
IID	Green Island Road	425	3	Devlin Development	E			
IID	Green Island Road	411	2	Green Island Road Streetscaping	E			
IID	Green Island Road	411	1	Green Island Road Streetscaping	E			
IID	Green Island Road	603	3	Blazer Fock Landscaping	E			
IID	Green Island Road	412	3	Green Island Road Streetscaping	E	12	5	12
V	Newell Preserve		400	Newell Preserve	F	333 <sup>2</sup>	1	333
<b>Totals</b>							<b>45</b>	<b>666</b>

Note: Segment 5 will either connect vineyards connected to the City's raw water system or it will connect the new City Park

1: User type

C = Current user Not Eligible

E = Existing User, will come online immediately when project is complete

F = Future User, will come online at a predetermined date

NE =Future User Not Eligible

2: Eligible Project Capacity per WRFP Guidelines Section III I.1













# **RATE SCHEDULE** **Effective January 2011**

Water Rates Customer Category	Inside the City		Outside the City	
	Volume Charge per Unit	Monthly Meter Charge	Volume Charge per Unit	Monthly Meter Charge
<b>Single-Family Residential</b>				
Tier 1 (0-8 units*)	\$2.76	\$5.32	\$3.86	\$7.45
Tier 2 (9-20 units*)	\$3.53	\$5.32	\$4.94	\$7.45
Tier 3 (20+ units*)	\$3.77	\$5.32	\$5.28	\$7.45

\*1 unit = 748 gallons; the average household uses 14 units per month

<b>Multi-Family, Commercial and Landscape</b>				
< 1" meter	\$3.22	\$5.32	\$4.51	\$7.45
1" meter (residential)	\$3.22	\$5.32	\$4.51	\$7.45
1" meter (commercial)	\$3.22	\$8.88	\$4.51	\$12.43
1½ " meter	\$3.22	\$17.75	\$4.51	\$24.85
2" meter	\$3.22	\$28.39	\$4.51	\$39.75
3" meter	\$3.22	\$56.79	\$4.51	\$79.51
4" meter	\$3.22	\$88.73	\$4.51	\$124.23
6" meter	\$3.22	\$177.47	\$4.51	\$248.45
8" meter	\$3.22	\$283.95	\$4.51	\$397.53

<b>Private Fire Protection</b>	\$1.61	\$2.66	\$2.26	\$3.73
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<b>Temporary Hydrant Meters</b>	\$4.51	\$79.51
---------------------------------	--------	---------

<b>Raw Water</b>		
1" meter	\$1.54	\$8.88
2" meter	\$1.54	\$28.39
4" meter	\$1.54	\$88.73
6" meter	\$1.54	\$177.47

<b>Recycled Water</b>	By contract
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## **Sewer Rates**

Single-Family Residential:	Flat Rate	January to March - Average Usage**
Low Winter Water Use	\$41.42	4 units or less per month
Average Winter Water Use	\$44.11	4 – 13 units per month
High Winter Water Use	\$45.69	more than 13 units per month
<b>Multi-Family Residential</b>		
	\$33.08 per mobile home unit	

\*\* Sewer rates are set according to the average monthly usage for January to March of the previous calendar year. New customers are charged per average winter usage and rates are adjusted the following year if applicable.







## **ORDINANCE 2009-03**

### **AN ORDINANCE OF THE CITY OF AMERICAN CANYON, STATE OF CALIFORNIA, ESTABLISHING A WATER CONSERVATION PLAN**

**WHEREAS**, the City Council of the City of American Canyon is concerned about the health, safety and welfare of its water customers; and

**WHEREAS**, when dry conditions prevail, the general welfare requires that the City's available water resources be put to the maximum beneficial use to every extent possible; and

**WHEREAS**, the cooperation of all City water customers is required to prevent the waste or unreasonable use of water during drought conditions, including conservation efforts with the view to the reasonable and beneficial use of water in the interest of all water customers and the greater public welfare.

**NOW, THEREFORE**, the City Council of American Canyon does hereby ordain as follows:

Ordinance No. 29, adopted as an emergency ordinance by the American Canyon County Water District on June 4, 1991, and as amended by Emergency Ordinance No. 30 on June 18, 1991, and as amended by Emergency Ordinance No. 32 on August 6, 1991, is hereby repealed.

**SECTION 1.** Section 13.14 of the City of American Canyon Municipal Code is added to *Title 13, Water Service Systems*, to read as follows:

#### **ARTICLE I. TITLE, PURPOSE AND GENERAL PROVISIONS**

##### **13.14.010 Title**

This chapter shall be known as the "Water Conservation Plan" of the City of American Canyon and may be so cited.

##### **13.14.020 Purpose and Intent**

The purpose of this ordinance is to have a plan for water conservation resulting from a reduced supply of water such as may result from drought, water supply shortages, or limitations of water delivery conditions.

Nothing in this ordinance will preclude the City Council from passing an emergency resolution for the immediate curtailment of water use by its customers due to water supply shortages and delivery limitations caused by catastrophic events and conditions, either natural or unnatural.

#### 13.14.030 Definitions

The terms used in this chapter shall have the following meanings:

- A. The "City" means the City of American Canyon acting by and through the City of American Canyon Public Works Department as operator of the City of American Canyon water system.
- B. "Manager" is the City Manager of the City of American Canyon.
- C. "Public Works Director" is the Public Works Department head of the City of American Canyon.
- D. "Customer" means any person, firm, partnership, association, corporation, company, organization, or governmental entity, whether within or without the geographic boundaries of the City of American Canyon, who uses water supplied by the City.
- E. "GPD" means gallons per day.
- F. "Water" means potable water.

#### 13.14.040 Authorization

The City Manager or his or her designee, is authorized and directed to implement the applicable provisions of this chapter upon adoption of a City Council resolution determining that such implementation is necessary to protect the public health, safety, and welfare.

#### 13.14.050 Application

The provisions of this chapter shall apply to all persons, customers, and property served by the City.

#### 13.14.060 Water Waste Prohibitions

Non-essential uses: No customer of the City shall use, or permit the use of, potable water from the City for residential, commercial, institutional, industrial, agricultural, or other purpose for the following nonessential uses:

1. The escape of water through breaks or leaks within the customer's plumbing or private distribution system for any substantial period of time within which such break or leak should reasonably have been discovered and corrected. It shall be presumed that a period of seventy-two (72) hours after the customer discovers such a break or leak or receives notice from the City, is a reasonable time within which to correct such a break or leak or, at a minimum, to stop the flow of water from such break or leak;



2. Irrigation in a manner or to an extent which allows excessive run-off of water or unreasonable over-spray of the areas being watered. Every customer is deemed to have his/her water system under control at all times, to know the manner and extent of his/her water use and any run-off, and to employ available alternatives to apply irrigation water in a reasonably efficient manner;
3. Washing cars, boats, trailers or other vehicles and machinery directly with a hose not equipped with a shutoff nozzle;
4. Water for non-recycling decorative water fountains;
5. Water for single-pass evaporative cooling systems for air conditioning in all connections installed after the effective date of this ordinance, unless required for health or safety reasons;
6. Water for new non-recirculating conveyor car wash systems; and
7. Water for new non-recirculating industrial clothes wash systems.

Exempt Water Uses: All water use associated with the operation and maintenance of fire suppression equipment or employed by the City for water quality flushing and sanitation purposes shall be exempt from the provisions of this section. Use of water supplied by a private well or from a reclaimed wastewater or rain water utilization system is also exempt.

#### 13.14.070 Water Conservation Stages

No customer of the City shall make, cause, use, or permit the use of water from the City for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this chapter, or in an amount in excess of that use permitted by either Conservation Stage 2 or 3 when in effect as declared by separate resolution of the City Council, in accordance with the provisions of this Chapter.

During a declared drought emergency, the fees and charges for “voluntary” requests for leak inspections and water audits shall be waived.

- A. Stage 1. Voluntary Conservation. In order to achieve an overall system-wide reduction goal of 10 percent, all potable water customers of the City shall be requested to:
1. Apply irrigation water only during the evening and early morning hours to reduce evaporation losses.
  2. Inspect all irrigation systems, repair leaks, and adjust spray heads to provide optimum coverage and eliminate avoidable over-spray.
  3. For irrigation valves controlling water applied to lawns, vary the minutes of run-time consistent with fluctuations in weather.
  4. Reduce minutes of run-time for each irrigation cycle if water begins to run-off to gutters and ditches before the irrigation cycle is completed.

5. Utilize water conservation incentive, rebate and giveaway programs to replace water guzzling plumbing fixtures and appliances with water efficient models.
6. Utilize City information regarding using water efficiently, reading water meters, repairing ordinary leaks, and water efficient landscape.

B. Stage 2. Mandatory Compliance - Water Alert. The City Council may by resolution declare a Conservation Stage 2 upon recommendation by the City Manager based on water supply and delivery projections by the Public Works Director that an overall system-wide reduction of 20 percent is necessary. The reduction shall be based upon the amount of water used during that base period defined as the amount of water used on a customer's premises during the corresponding monthly billing period in the previous year. New services or services without a prior year billing history shall be allotted on comparable customer usage. In order to achieve an overall system-wide reduction of 20 percent, the following activities shall be prohibited:

1. Gardening and landscape irrigation utilizing individual sprinklers or sprinkler systems on lawns, gardens, landscaped areas, trees, shrubs, or other plants is prohibited except during the hours of 12:01 AM to 12:00 noon and from 6:00 PM to 12:00 midnight, provided, however, that irrigation of lawns, gardens, landscaped areas, trees, shrubs, or other plants is permitted at anytime if:
  - a. a hand-held hose is used, or
  - b. a hand-held, faucet-filled bucket of five (5) gallons or less is used, or
  - c. a drip irrigation system is used.
2. The washing of automobiles, trucks, trailers, boats, airplanes, and other types of mobile equipment is prohibited except between the hours of 12:01 AM to 12:00 noon and from 6:00 PM to 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket, or hand-held hose equipped with a positive shutoff nozzle used for quick rinses. Washing may be done at any time on the immediate premises of a commercial car wash whose primary business is car washing.

EXCEPTION: Washing may be exempted from the foregoing requirements upon written approval by the City Manager, if the public health, safety, and welfare are contingent upon frequent vehicle cleaning, such as garbage trucks and vehicles to transport food and perishables.
3. The refilling or initial filling of water to a swimming pool is prohibited.

4. The operation of any ornamental fountain or other structure making similar use of water is prohibited except for those fountains/structures with a recycling system which recycles 75 percent of the water in the system. The use of treated water to fill, refill, or maintain the level of any fountain is prohibited.
5. Use of water from fire hydrants shall be limited to fire fighting and other activities necessary to maintain the health, safety, and welfare of the citizens of American Canyon.
6. The following uses of water are defined as "waste of water" and are absolutely prohibited:
  - a. allowing water to run off to a gutter, ditch, or drain;
  - b. failing to repair a controllable leak;
  - c. washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, unless the concrete foundation is in the process of curing during construction, and except to alleviate immediate fire hazards.
  - d. use of potable water to irrigate grass, lawns, ground-cover, shrubbery, crops, trees or other vegetation between the hours of 12:00 noon and 6:00 PM or in such a manner as to result in runoff for more than five minutes.
7. All restaurants are prohibited from serving water to customers except when specifically requested by the customer.
8. The use of water, treated or untreated, for use in earth compaction, dust control, or other construction use, including the testing of new sewer lines, is prohibited, unless the water is obtained from a source approved by the City, provided, however, notwithstanding the foregoing, treated water may be used for purposes of testing new water service lines.
9. Withdrawal of water from fire hydrants within the service area of the City, except for purposes of fire fighting and water system maintenance, is prohibited.
10. Water use by a vehicle washing facility in excess of 20 percent less than the amount used by the facility during the corresponding billing period in the prior year.

- C. Stage 3. Mandatory Compliance - Water Emergency. The City Council may, by resolution, declare a Conservation Stage 3 upon recommendation by the City Manager based on water supply and delivery projections by the Public Works Director that an overall system-wide reduction of 30 percent is necessary. The reduction shall be based upon the amount of water used during that base period defined as the amount of water used on a customer's premises during the corresponding monthly billing period in the previous year. New services or services without a prior year billing history shall be allotted on comparable customer usage. In order to achieve an overall system-wide reduction of 30 percent, the following activities shall be prohibited:
1. Any activities prohibited during a Conservation Stage 2.
  2. Watering any residential lawn, or any commercial or industrial area lawn irrigated with potable water, at any time of day or night.
  3. Planting any new landscaping, except for designated drought resistant landscaping prescribed by the City Manager or designated representative.
  4. All day and night-time irrigation sprinkling unless only a hand-held nozzle is used. An exception will be made to permit drip irrigation for established perennial plants and trees using manual or automatic time-controlled water application.
  5. Planting of new annual plants, vegetables, flowers or vines.
- D. Stage 4. Mandatory Compliance - Severe Water Emergency. The City Council may, by resolution, declare a Conservation Stage 4 upon recommendation by the City Manager based on water supply and delivery projections by the Public Works Director that an overall system-wide reduction of 50 percent is necessary. The reduction shall be based upon the amount of water used during that base period defined as the amount of water used on a customer's premises during the corresponding monthly billing period in the previous year. New services or services without a prior year billing history shall be allotted on comparable customer usage. In order to achieve an overall system-wide reduction of 50 percent, the following activities shall be prohibited:
1. Any activities prohibited during a Conservation Stage 1; 2, or 3.
  2. Mandatory water rationing based on established water banks in effect.

#### 13.14.080 Mandatory Conservation Phase Implementation

After the City Council, by resolution, declares a Conservation Stage 2, 3 or 4, the City Manager shall order that the appropriate stage of water conservation be implemented in accordance with the applicable provisions of this chapter. Said order shall be made by public announcement; shall be published a minimum of one (1) time in a daily newspaper of general circulation, and shall continue to be published on a weekly basis until such time as all restrictions are removed.

#### 13.14.090 Duration of Conservation Stages

Mandatory stages shall be effective upon the effective date of this ordinance and may be implemented as authorized by City Council resolution. Current conservation stages as

authorized by City Council will be modified at such time that conditions indicate a more or less restrictive stage is necessary.

**13.14.100 Drought Surcharge**

- A. Customers will receive prior notification of the standard allotment basis, applicable rates, and the opportunity to request exceptions to the standard allotment basis.
- B. Water use beyond the maximum allowed for each water conservation stage shall be subject to a drought surcharge pursuant to the schedule set forth below. The customer of record may request an increase in this basic allotment as set forth in Section 13.14.110 hereof. Application forms and instructions will be available at the American Canyon City Hall.
- C. In addition to the general water service rates, each customer shall pay, during each billing period, a drought surcharge for water delivered in excess of the basic allotment. The surcharge is as follows:
  - Up to 10% in excess of allotment = 1.0 times the applicable volume charge
  - 10.01 to 20% in excess of allotment = 2.0 times the applicable volume charge
  - Over 20% in excess of allotment = 3.0 times the applicable volume charge
- D. Customers whose water usage falls in Tier 1 of the rate schedule are assumed to have maximized their conservation effort and will not be subject to a drought surcharge if their water consumption is not further reduced.
- E. In addition to the drought surcharge, if drought usage exceeds the allowed allotment, a warning will be issued and enforcement actions may be taken as described in Section 13.14.120.
- F. Customers who are willing to pay a premium for water may be allowed to do so, assuming that their higher usage does not compromise the City's ability to provide water to its other customers.

**13.14.110 Exceptions and Application Procedures for Exceptions**

Any customer of the City may make written application for an exception. Said application shall describe in detail why applicant believes an exception is justified.

- A. The City Manager may grant exceptions for use of water otherwise prohibited by this section upon finding and determining that failure to do so would cause an emergency condition affecting the health, sanitation, fire protection or safety of the applicant or public; or, cause an unnecessary and undue hardship on applicant or the public, including but not limited to, adverse economic impacts, such as loss of production or jobs.
- B. In the event of an appeal of a drought surcharge, customers who can clearly

demonstrate that they have taken steps to reduce their water consumption (by installing water efficient appliances, drip irrigation, drought tolerant landscaping, etc.) shall be considered favorably in granting waivers.

- C. No increase in the basic water allotment shall be granted unless the customer has installed all water-saving devices which are feasible. Water saving devices include: (1) ultra-low flush toilets utilizing 1.6 gallons per flush or less; (2) low-flow shower heads; (3) low-flow faucet restrictors utilizing 2 gallons per minute or less; (4) drip irrigation systems.
- D. The decision of the City Manager may be appealed to the City Council by submitting a written appeal to the City Clerk within fifteen (15) calendar days of the date of the decision. Upon granting any appeal, the City Council may impose any conditions it determines to be just and proper. Exceptions granted by the City Council shall be prepared in writing and the City Council may require the exception be recorded at applicant's expense.

#### 13.14.120 Violation - Enforcement

The violation of each provision of this chapter, and each separate violation thereof, shall be deemed a separate offense, and shall be enforced accordingly.

- A. Any customer that violates any provision of this ordinance shall, in addition to the imposition of the drought surcharge rates of Section 13.14.100 hereof, receive a personal contact by the City at the address of the water service. If personal contact is unsuccessful, written notice of the violation, including a date that the violation is to be corrected, may be left on the premises, with a copy of the notice sent by Certified Mail to the customer.
- B. If after issuance of the written warning, the Manager determines that the customer has continued or is continuing to violate the provisions of this chapter, the Manager may authorize and implement installation of a flow restricting device on the service line or reduce the amount of water available to the customer. Any costs incurred by the City to authorize and implement the flow restricting device or reduce the amount of water available to the customer shall be borne by the customer. The flow restricting device shall be removed and the prior water supply amount resumed no sooner than sixty (60) days after the date of the installation of the flow restricting device or a reduction in water available, provided that no further violations have occurred within that time.

- C. If after implementation of a flow restricting device or reduction of water available to a customer, the customer continues to violate the provisions of the ordinance, the City may disconnect the service to the customer for a period of three (3) days. All costs or expenses incurred by the City for enforcement of this section shall be borne by the customer.
- D. The unauthorized use of water following a disconnection of service pursuant to Section 13.14.120 (C) above, or any other unauthorized use of water from a fire hydrant or other use bypassing an installed meter, shall be subject to an automatic fine of \$2,500.00 for the first offense and \$5,000.00 for the second offense.

#### **13.14.130 Violation - Penalties**

In addition to all other remedies provided herein, any person who violates any provision of this chapter after having received a written notice to refrain as provided in Section 13.14.120 (A) is guilty of an infraction. The violation of each provision of this chapter and each separate violation thereof shall be deemed a separate offense and shall be punished accordingly. Each offense shall be punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one year; and
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one year.

#### **13.14.140 Violation – Additional Remedy**

As an additional remedy, the violation of any provision of this chapter by any person who has received more than one written warning pursuant to Section 13.14.120 (A) to refrain from the same or any other violation under this chapter in one calendar year shall be deemed and is declared to be, a public nuisance and may be subject to abatement in accordance with the City of American Canyon Municipal Code.

### **SECTION 2. Severability**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

### **SECTION 3. Effective Date**

This ordinance shall become effective 30 days after the date of adoption.

### **SECTION 4. Posting**

The City Clerk shall cause this ordinance to be published and/or posted within fifteen (15) days after its adoption.

THE FOREGOING ORDINANCE was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 3<sup>rd</sup> day of February, 2009, and was approved and adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 17<sup>th</sup> day of February, 2009, by the following vote:

AYES:	Garcia, Callison, Bennett, Coffey, West
NOES:	None
ABSTAIN:	None
ABSENT:	None



Leon Garcia, Mayor

ATTEST:

  
Dorothy Roadman, City Clerk

APPROVED AS TO FORM:

  
William D. Ross, City Attorney







The fields in red are required.



Agency name: City of American Canyon  
 Division name (Reporting unit): City of American Canyon  
 Reporting unit number: 44  
 Primary contact: First name: Lou, Last name: Leet, Email: LLEET@ci.american-canyon.ca.gov

## WATER SOURCES

Service Area Population: 18,462

### Potable Water

Own Supply Source Name	AF/YEAR	Water Supply Type	Water Supply Description
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	

Imported Supply Source Name	AF/YEAR	Water Supply Type	Water Supply Description
Vallejo Treated	150.00	Surface	
State Water Project	3,196.00	Surface	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	

Exported Water Name	AF/YEAR	Where Exported?

2009





Division name  
(Reporting unit) **City of American Canyon**

Primary contact:

Last name: Leet

Email: [LLEET@ci.american-canyon.ca.gov](mailto:LLEET@ci.american-canyon.ca.gov)

Service Area Population: 18462

If you select Other for type, enter

[illegible][illegible][illegible]

# 2009



The fields in red are required.

Agency name: City of American Canyon

Primary contact:

First name: Lou

Division name  
(Reporting unit) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: [LLEET@ci.american-canyon.ca.gov](mailto:LLEET@ci.american-canyon.ca.gov)



# Water Uses 2009

## Potable Water Billed

**Make sure to enter numbers in AF/Year.**

[illegible]

## Potable Water Un-Billed

[illegible]



The fields in red are required.

Primary contact:

Agency name: City of American Canyon

First name: Lou

Lou

Division name  
(Reporting unit) City of American Canyon

Last name: Leet

Leet

Reporting unit number: 44

Email: [LLEET@ci.american-canyon.ca.us](mailto:LLEET@ci.american-canyon.ca.us)



# Water Uses 2009

## Non-Potable Billed

[illegible]

## Non-Potable Un-Billed

[illegible]

The fields in red are required.



Agency name:  Primary contact:  
First name:   
Reporting unit name (District name):  Last name:   
Reporting unit number:  Email:

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.

[Link to FAQs](#)

# 2009

## BMP 1.1 Operations Practices

Comments:

[See the complete MOU:](#) [View MOU](#)

[See the coverage requirements for this BMP:](#)

### Conservation Coordinator

Conservation Coordinator ☒ Yes ☐ No

### Contact Information

First Name:   
Last Name:   
Title:   
Phone:   
Email:

Note that the contact information may be the same as the primary contact information at the top of the page. If this is your case, excuse the inconvenience but please enter the information again.

### Water Waste Prevention

Water Agency shall do one or more of the following:

- Enact and enforce an ordinance or establish terms of service that prohibit water waste
- Enact and enforce an ordinance or establish terms of service for water efficient design in new development
- Support legislation or regulations that prohibit water waste
- Enact an ordinance or establish terms of service to facilitate implementation of water shortage response measures
- Support local ordinances that prohibit water waste
- Support local ordinances that establish permits requirements for water efficient design in new

To document this BMP, provide the following:

- A description of, or electronic link to, any ordinances or terms of service
- A description of, or electronic link to, any ordinances or requirements adopted by local jurisdictions or regulatory agencies with the water agency's service area.
- A description of any water agency efforts to cooperate with other entities in the adoption or enforcement of local requirement
- description of agency support positions with respect to adoption of legislation or regulations

You can show your documentation by providing files, links (web addresses), and/or entering a description.

File name(s): Email files to [natalie@cuwcc.org](mailto:natalie@cuwcc.org)

Web address(s) URL: comma-separated list

Enter a description:



The fields in red are required.



Agency name: City of American Canyon

Reporting unit name  
(District name) City of American Canyon

Reporting unit number: 44

Primary contact:

First name: Lou

Last name: Leet

Email: LLEET@ci.american-canyon.ca.gov

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.

[Link to FAQs](#)

[View MOU](#)

# 2009 BMP 1.2 Water Loss Control

Did your agency complete a pre-screening system audit in 2009? Yes ☐ No ☒

If yes, answer the following:

Determine metered sales in AF: 2,887.00

Definition: other accountable uses not included in metered sales, such as unbilled water use, fire suppression, etc.

→ Determine system verifiable uses AF: 0.00

Determine total supply into the system in AF: 3,350.00

Does your agency keep necessary data on file to verify the answers above? Yes ☒ No ☐

Did your agency complete a full-scale system water audit during 2009? Yes ☐ No ☒

Does your agency maintain in-house records of audit results or the completed AWWA worksheet for the completed audit which could be forwarded to CUWCC? Yes ☒ No ☐

Did your agency operate a system leak detection program? Yes ☒ No ☐

## Comments:

Each year the City conducts leak detection activities at a rate of approximately 5 miles per year.



The fields in red are required.

Primary contact:

Agency name: City of American Canyon

First name: Lou

Reporting unit name  
(District name) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: LLEET@ci.american-canyon.ca.gov

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.



## BMP 1.3 Metering with Commodity

[Link to FAQs](#)

[See the complete MOU: View MOU](#)

[See the coverage requirements for this BMP:](#)

### Implementation

Does your agency have any unmetered service connections?

☐ Yes ☒ No

If YES, has your agency completed a meter retrofit plan?

☐ Yes ☐ No

Enter the number of previously unmetered accounts fitted with meters during reporting year:

Are all new service connections being metered?

☒ Yes ☐ No

Are all new service connections being billed volumetrically?

☒ Yes ☐ No

Has your agency completed and submitted electronically to the Council a written plan, policy or program to test, repair and replace meters?

☐ Yes ☒ No

#### Please Fill Out The Following Matrix

Account Type	# Metered Accounts	# Metered Accounts Read	# Metered Accounts Billed by Volume	Billing Frequency Per Year	# of estimated bills/yr
Single-Family	4,724	4,724	4,724	Monthly	12
Multi-Family	26	26	26	Monthly	12
Commercial	290	290	290	Monthly	12
Institutional	20	20	20	Monthly	12
Dedicated Irrigatic	131	131	131	Monthly	12
Other	212	212	212	Monthly	12
Other				Other	
Other				Other	
Other				Other	
Other				Other	

Number of CII Accounts with Mixed-use Meters 336

Number of CII Accounts with Mixed-use Meters Retrofitted with Dedicated Irrigation Meters during Reporting Period 0

### Feasibility Study

Has your agency conducted a feasibility study to assess the merits of a program to provide incentives to switch mixed-use accounts to dedicated landscape meters? ☐ Yes ☒ No

If YES, please fill in the following information:

A. When was the Feasibility Study conducted

B. Email or provide a link to the feasibility study (or description of):

File name(s): Email files to [natalie@cuwcc.org](mailto:natalie@cuwcc.org) Enter the file name here e.g. WaterWastePreventionOrdinance

Web address(s) URL: comma-separated list Enter the URL to your documentation.

General Comments about BMP 1.3:



The fields in red are required.

Primary contact:

Agency name: City of American Canyon

First name: Lou

Reporting unit name  
(District name) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: LLEET@ci.american-canyon.ca

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.



2009

## BMP 1.4 Retail Conservation Pricing

[Link to FAQs](#)

[View MOU](#)

If you are reporting more rate structures than this form allows, add the structures to a spreadsheet and send the file to natalie@cuwcc.org.

### Implementation (Water Rate Structure)

Enter the Water Rate Structures that are assigned to the majority of your customers, by customer class

Rate Structure	Customer Class	Total Revenue	Commodity Charges	Total Revenue	Customer Meter/Service (Fixed Charges)
Uniform	Commercial	899,425.31		77,751.11	
Uniform	Dedicated Irrigation	349,032.65		15,878.15	
Uniform	Institutional	214,984.94		12,175.71	
Uniform	Fire Lines	909.48		6,047.45	
Uniform	Multi-Family	198,371.95		7,920.72	
Increasing Block Sr	Single-Family	1,830,640.16		253,185.64	
Select a Rate Struc	Other	92,219.64		14,653.33	

### Implementation Option (Conservation Pricing Option)

- ☒ Use Annual Revenue As Reported  
☐ Use Canadian Water & Wastewater Association Rate Design Model

If CWWA is select, enter the file name and email the spreadsheet to natalie@cuwcc.org

### Retail Waste Water (Sewer) Rate Structure by Customer Class

Agency Provide Sewer Service

☐ Yes ☐ No

Select the Retail Waste Water(Sewer) Rate Structure assigned to the majority of your customers within a specific customer class.

Rate Structure	Customer Class	Total Revenue	Commodity Charges	Total Revenue	Customer Meter/Service (Fixed Charges)
Increasing Block	Commercial			369,604.18	
Increasing Block	Institutional			14,998.81	
Increasing Block	Multi-Family			371,967.02	
Increasing Block	Single-Family			2,194,319.24	
Select a Rate Struc	Other				
Select a Rate Struc	Other				
Select a Rate Struc	Other				

Comments:

Commercial = Commercial/Industrial

The fields in red are required.

Primary contact:

Agency name: City of American Canyon

First name: Lou

Reporting unit name  
(District name) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: LLEET@ci.american-canyon.q

Click here to open a table that displays your agency name reporting unit name and reporting unit number. Please ensure that you enter the correct information.



# 2009

[Link to FAQs](#)

## BMP 2.1 Public Outreach Cont'd

[View MOU](#)

### Public Outreach Expenses

Enter expenses for public outreach programs. Please include the same kind of expenses you included in the question related to your budget (Section 2.1.7, above). For example, if you included personnel costs in the budget entered above, be sure to include them here as well.

Expense Category	Expense Amount	Personnel Costs Included?	
educational materials, devices	\$7,634	<input type="checkbox"/>	If yes, check the check box.
		<input type="checkbox"/>	
		<input type="checkbox"/>	
		<input type="checkbox"/>	

### Additional Public Information Program

Please report additional public information contacts. List these additional contacts in order of how your agency views their importance / effectiveness with respect to conserving water, with the most important/ effective listed first (where 1 = most important).

Were there additional Public Outreach efforts?

☐ Yes ☐ No

### Public Outreach Additional Information

Public Information Programs	Importance	

### Social Marketing Programs

#### Branding

Does your agency have a water conservation "brand," "theme" or mascot? ☒ Yes ☐ No

Describe the brand, theme or mascot.

If we each save a little, We all save a lot!

### Market Research

Have you sponsored or participated in market research to refine your message? ☐ Yes ☒ No



Market Research Topic

Brand Message

Brand Mission Statement

#### Community Committees

Do you have a community conservation committee?

☒ Yes ☐ No

Enter the names of the community committees:

Blue Ribbon Water Committee

#### Training

Training Type	# of Trainings	# of Attendees	Description of Other

#### Social Marketing Expenditures

##### Public Outreach Social Marketing Expenses

Expense Category	Expense Amount	Description

#### Partnering Programs - Partners

Name

Type of Program

☐ CLCA?

☒ Green Building Programs?

☒ Master Gardeners?

☐ Cooperative Extension?

☐ Local Colleges?

☒ Other

☐ Retail and wholesale outlet; name(s) and type(s) of programs:

#### Partnering Programs - Newsletters

Number of newsletters per year

Number of customers per year

**Partnering with Other Utilities**

Describe other utilities your agency partners with, including electrical utilities

The City partners with PG&E to provide water-efficient clothes washing machines.  
The City participates in the Bay Area Water Conservation Agencies group.  
The City partners with City of Napa on advertisements and publications.

**Conservation Gardens**

Describe water conservation gardens at your agency or other high traffic areas or new

None

**Landscape contests or awards**

Describe water wise landscape contest or awards program conducted by your agency

None

Comments:



The fields in red are required.



Agency name:  Primary contact:  
First name:   
Reporting unit name (District name):  Last name:   
Reporting unit number:  Email:

Click here to open a table that displays your agency name reporting unit name and reporting unit number. Please ensure that you enter the correct information.

[Link to FAQs](#)

[View MOU](#)

# 2009

## BMP 2.1 Public Outreach - Retail Reporting

### Is a Wholesale Agency Performing Public Outreach?

Are there one or more wholesale agencies performing public outreach which can be counted to help your agency comply with the BMP?

☐ Yes ☒ No

Enter the name(s) of the wholesale agency (comma delimited)

### Is your agency performing public outreach?

Report a minimum of 4 water conservation related contacts your agency had with the public during the year.

#### Public Information Programs List

Did at least one contact take place during each quarter of the reporting year? ☒

Number of Public Contacts	Public Information Programs
6	Website
6	Flyers and/or brochures (total copies), bill stuffers, messages printed on bill, information packets
12	General water conservation information
	Select a public contact
	Select a public contact

### Contact with the Media

Are there one or more wholesale agencies performing media outreach which can be counted to help your agency comply with the BMP?

☐ Yes ☒ No

Enter the name(s) of the wholesale agency (comma delimited)

### OR Retail Agency (Contacts with the Media)

Did at least one contact take place during each quarter of the reporting year? ☐

#### Media Contacts List

Number of Media Contacts	Did at least one contact take place during each quarter of the reporting year?	Media Contact Types
3		News releases
		Select a type of media contact
		Select a type of media contact
		Select a type of media contact
		Select a type of media contact
		Select a type of media contact



**Is a Wholesale Agency Performing Website Updates?**

Did one or more CUWCC wholesale agencies agree to assume your agency's responsibility for meeting the requirements of and for CUWCC reporting of this BMP? ☐ Yes ☐ No

Enter the name(s) of the wholesale agency (comma delimited)

**Is Your Agency Performing Website Updates?**

Enter your agency's URL (website address):

www.ci.american-canyon.ca.us

Describe a minimum of four water conservation related updates to your agency's website that took place during the year:

2 Reminder to check sprinklers.  
Tips to Save Water  
Water Waste Prohibition  
Washer Rebate  
Free Water Saving Devices Available

Did at least one Website Update take place during each quarter of the reporting year? ☒ Yes ☐ No

**Public Outreach Annual Budget**

Enter budget for public outreach programs. You may enter total budget in a single line or break the budget into discrete categories by entering many rows. Please indicate if personnel costs are included in the entry.

Category	Amount		Personnel Costs Included? If yes, check the box.	Comments
	\$50,000		<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	

Comments:



The fields in red are required.



Agency name: City of American Canyon

Reporting unit name

(District name) City of American Canyon

Reporting unit number: 44

Primary contact:

First name:

Lou

Last name:

Leet

Email:

LLEET@ci.american-canyon.ca.gov

Click here to open a table that displays your agency name reporting unit name and reporting unit number. Please ensure that you enter the correct information.

# 2009

## BMP 2.2 School Education Programs, Retail Agencies School Programs

[Link to FAQs](#)

[View MOU](#)

Is a wholesale agency implementing school programs which can be counted to help your agency comply with this BMP?

☐ Yes ☐ No

Enter Wholesaler Names, separated by commas:

☐ Materials meet state education framework requirements?

Description of Materials

☐ Materials distributed to K-6 Students?

Description of materials distributed to K-6 Students

Number of students reached

☐ Materials distributed to 7-12 Students?

Description of materials distributed to 7-12 Students

Number of Distribution

Annual budget for school education program

Description of all other water supplier education programs

### School Program Activities

Classroom presentations:

Number of presentations

Number of attendees

Large group assemblies:

Number of presentations

Number of attendees

Children's water festivals or other events:

Number of presentations

Number of attendees

Cooperative efforts with existing science/water education programs (various workshops, science fair awards or judging) and follow-up:

Number of presentations

Number of attendees

Other methods of disseminating information (i.e. themed age-appropriate classroom loaner kits):

Description

Number distributed

**Staffing children's booths at events & festivals:**

Number of booths

Number of attendees

**Water conservation contests such as poster and photo:**

Description

Number distributed

**Offer monetary awards/funding or scholarships to students:**

Number Offered

Total Funding

**Teacher training workshops:**

Number of presentations

Number of attendees

**Fund and/or staff student field trips to treatment facilities, recycling facilities, water conservation gardens, etc.:**

Number of tours or field trips

Number of participants

**College internships in water conservation offered:**

Number of internships

Total funding

**Career fairs/workshops:**

Number of presentations

Number of attendees

**Additional program(s) supported by agency but not mentioned above:**

Description

Number of events (if applicable)

Number of participants

**Total reporting period budget expenditures for school education programs (include all agency costs):**

Comments



The fields in red are required.

Primary contact:

Agency name:

City of American Canyon

First name:

Lou

Division name  
(Reporting unit)

City of American Canyon

Last name:

Leet

Reporting unit number:

44

Email:

LLEET@ci.american-canyon.ca.gov



## WATER SOURCES

Service Area Population: 19,532

### Potable Water

Own Supply Source Name	AF/YEAR	Water Supply Type	Water Supply Description
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	

Imported Supply Source Name	AF/YEAR	Water Supply Type	Water Supply Description
State Water Project	2,185.00	Surface	
Vallejo Permit	500.00	Surface	
Vallejo Treated	33.00	Surface	
Napa Treated	306.00	Surface	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	
		Other	

Exported Water Name	AF/YEAR	Where Exported?

2010



Primary contact:

First name:

Last name: Leet

Email: [LLEET@ci.american-canyon.ca.us](mailto:LLEET@ci.american-canyon.ca.us)



19532

## Non- Potable Water

If you select Other for type, enter

[illegible][illegible][illegible]





Division name  
(Reporting unit) City of American Canyon

Email: [LLEET@ci.american-canyon.ca.gov](mailto:LLEET@ci.american-canyon.ca.gov)

[illegible]

The fields in red are required.

Agency name: City of American Canyon

Primary contact:

First name:

Division name  
(Reporting unit) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: [LLEET@ci.american-canyon.ca.gov](mailto:LLEET@ci.american-canyon.ca.gov)



# Water Uses 2010

## Non-Potable Billed

[illegible]

## Non-Potable Un-Billed

[illegible]



The fields in red are required.



Agency name: City of American Canyon

Reporting unit name

(District name) City of American Canyon

Reporting unit number:

44

Primary contact:

First name: Lou

Last name: Leet

Email: LLEET@ci.american-canyon.org

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.

[Link to FAQs](#)

# 2010

## BMP 1.1 Operations Practices

Comments:

[See the complete MOU:](#) [View MOU](#)

[See the coverage requirements for this BMP:](#)

### Conservation Coordinator

Conservation Coordinator ☒ Yes ☐ No

### Contact Information

First Name Lou

Last Name Leet

Title Public Works Environmental Specialist

Phone 707-647-4551

Email LLEET@ci.american-canyon.org

Note that the contact information may be the same as the primary contact information at the top of the page. If this is your case, excuse the inconvenience but please enter the information again.

### Water Waste Prevention

Water Agency shall do one or more of the following:

- Enact and enforce an ordinance or establish terms of service that prohibit water waste
- Enact and enforce an ordinance or establish terms of service for water efficient design in new development
- Support legislation or regulations that prohibit water waste
- Enact an ordinance or establish terms of service to facilitate implementation of water shortage response measures
- Support local ordinances that prohibit water waste
- Support local ordinances that establish permits requirements for water efficient design in new

To document this BMP, provide the following:

- A description of, or electronic link to, any ordinances or terms of service
- A description of, or electronic link to, any ordinances or requirements adopted by local jurisdictions or regulatory agencies with the water agency's service area.
- A description of any water agency efforts to cooperate with other entities in the adoption or enforcement of local requirement
- description of agency support positions with respect to adoption of legislation or regulations

You can show your documentation by providing files, links (web addresses), and/or entering a description.

File name(s): Email files to [natalie@cuwcc.org](mailto:natalie@cuwcc.org)

Web address(s) URL: comma-separated list

<http://qcode.us/codes/american-canyon/>

Enter a description:

The fields in red are required.



Agency name: City of American Canyon

Reporting unit name

(District name) City of American Canyon

Reporting unit number: 44

Primary contact:

First name: Lou

Last name: Leet

Email: LLEETT@ci.american-canyon.ca.gov

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.

[Link to FAQs](#)

[View MOU](#)

# 2010

## BMP 1.2 Water Loss Control

### AWWA Water Audit

Agency to complete a Water Audit & Balance Using The AWWA Software ☐ Yes ☒ No  
Email to natalie@cuwcc.org - Worksheets (AWWA Water Audit). Enter the name of the file below:

Water Audit Validity Score  
from AWWA spreadsheet

Agency Completed Training In The AWWA Water Audit Method ☐ Yes ☒ No

Agency Completed Training In The Component Analysis Process ☐ Yes ☒ No

Completed/Updated the Component Analysis (at least every 4 years)? ☐ Yes ☒ No

Component Analysis Completed/Updated Date

### Water Loss Performance

Agency Repaired All Reported Leaks & Breaks To The Extent Cost Effective ☒ Yes ☐ No

### Recording Keeping Requirements:

Date/Time Leak Reported	Leak Location
Type of Leaking Pipe Segment or Fitting	Leak Running Time From Report to Repair
Leak Volume Estimate	Cost of Repair

Agency Located and Repaired Unreported Leaks to the Extent Cost Effective ☒ Yes ☐ No

Type of Program Activities Used to Detect Unreported Leaks

### Annual Summary Information

Complete the following table with annual summary information (required for reporting years 2-5 only)

Total Leaks Repaired	Economic Value Of Real Loss	Economic Value Of Apparent Loss	Miles Of System Surveyed For Leaks	Pressure Reduction Undertaken for loss reduction	Cost Of Interventions	Water Saved (AF/Year)
50		\$1,463.85	5		\$0.00	16.27

Comments:

The cost of "interventions" is not available as the costs are included in the departmental operational costs.



The fields in red are required.

Primary contact:

Agency name: City of American Canyon

First name: Lou

Reporting unit name  
(District name) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: LLEET@ci.american-canyon.ca.gov

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.



## BMP 1.3 Metering with Commodity 2010

[Link to FAQs](#)

[See the complete MOU: View MOU](#)

[See the coverage requirements for this BMP:](#)

### Implementation

Does your agency have any unmetered service connections?

☐ Yes ☒ No

If YES, has your agency completed a meter retrofit plan?

☐ Yes ☐ No

Enter the number of previously unmetered accounts fitted with meters during reporting year:

Are all new service connections being metered?

☒ Yes ☐ No

Are all new service connections being billed volumetrically?

☒ Yes ☐ No

Has your agency completed and submitted electronically to the Council a written plan, policy or program to test, repair and replace meters?

☐ Yes ☒ No

### Please Fill Out The Following Matrix

Account Type	# Metered Accounts	# Metered Accounts Read	# Metered Accounts Billed by Volume	Billing Frequency Per Year	# of estimated bills/yr
Single-Family	4,656	4,656	4,656	Monthly	12
Multi-Family	23	23	23	Monthly	12
Commercial	298	298	298	Monthly	12
Industrial	5	5	5	Monthly	12
Institutional	13	13	13	Monthly	12
Dedicated Irrigatic	98	98	98	Monthly	12
Other	17	17	17	Monthly	12
Other				Other	
Other				Other	
Other				Other	

Number of CII Accounts with Mixed-use Meters

Number of CII Accounts with Mixed-use Meters Retrofitted with Dedicated Irrigation Meters during Reporting Period

### Feasibility Study

Has your agency conducted a feasibility study to assess the merits of a program to provide incentives to switch mixed-use accounts to dedicated landscape meters? ☐ Yes ☒ No

If YES, please fill in the following information:

A. When was the Feasibility Study conducted

B. Describe, upload or provide an electronic link to the Feasibility Study Upload File

File name(s): Email files to [natalie@cuwcc.org](mailto:natalie@cuwcc.org)

Web address(s) URL: comma-separated list

Comments:

The number of dedicated irrigation meters listed here includes accounts receiving rec



The fields in red are required.

Primary contact:

You must enter the reporting unit number that we have on record for your agency. Click here to open a table to obtain this number.

Agency name: City of American Canyon

First name: Lou

Reporting unit name

(District name) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: LLEET@ci.american-canyon.q+



2010

## BMP 1.4 Retail Conservation Pricing

[Link to FAQs](#)

[View MOU](#)

If you are reporting more rate structures than this form allows, add the structures to a spreadsheet and send the file to [natalie@cuwcc.org](mailto:natalie@cuwcc.org).

### Implementation (Water Rate Structure)

Enter the Water Rate Structures that are assigned to the majority of your customers, by customer class

Rate Structure	Customer Class	Total Revenue	Commodity Charges	Total Revenue Customer Meter/Service (Fixed Charges)
Uniform	Commercial	1,036,098.81		55,645.87
Uniform	Dedicated Irrigation	320,270.94		15,810.63
Uniform	Institutional	277,749.70		13,370.36
Uniform	Fire Lines	1,006.62		6,469.59
Uniform	Multi-Family	197,386.77		7,985.34
Uniform	Single-Family	1,681,863.35		254,823.70
Select a Rate Struc	Other	17,154.30		10,336.04

### Implementation Option (Conservation Pricing Option)

- ☒ Use Annual Revenue As Reported  
☐ Use Canadian Water & Wastewater Association Rate Design Model

If CWWA is select, enter the file name and email the spreadsheet to [natalie@cuwcc.org](mailto:natalie@cuwcc.org)

### Retail Waste Water (Sewer) Rate Structure by Customer Class

Agency Provide Sewer Service

☒ Yes ☐ No

Select the Retail Waste Water(Sewer) Rate Structure assigned to the majority of your customers within a specific customer class.

Rate Structure	Customer Class	Total Revenue	Commodity Charges	Total Revenue Customer Meter/Service (Fixed Charges)
Increasing Block	Commercial	6,057,413.76		84,691.20
Increasing Block	Institutional	159,208.68		7,939.32
Increasing Block	Multi-Family	0.00		370,429.84
Increasing Block	Single-Family	0.00		2,226,715.89
Select a Rate Struc	Other			
Select a Rate Struc	Other			
Select a Rate Struc	Other			

Comments:



The fields in red are required.



Agency name:  Primary contact:  
First name:   
Reporting unit name (District name):  Last name:   
Reporting unit number:  Email:

Click here to open a table that displays your agency name reporting unit name and reporting unit number. Please ensure that you enter the correct information.

[Link to FAQs](#)

[View MOU](#)

# 2010

## BMP 2.1 Public Outreach - Retail Reporting

### Is a Wholesale Agency Performing Public Outreach?

Are there one or more wholesale agencies performing public outreach which can be counted to help your agency comply with the BMP?

☐ Yes ☒ No

Enter the name(s) of the wholesale agency (comma delimited)

### Is your agency performing public outreach?

Report a minimum of 4 water conservation related contacts your agency had with the public during the year.

#### Public Information Programs List

Did at least one contact take place during each quarter of the reporting year? ☒

Number of Public Contacts	Public Information Programs
6	Flyers and/or brochures (total copies), bill stuffers, messages printed on bill, information packets
12	General water conservation information
	Website
	Select a public contact
	Select a public contact

### Contact with the Media

Are there one or more wholesale agencies performing media outreach which can be counted to help your agency comply with the BMP?

☐ Yes ☒ No

Enter the name(s) of the wholesale agency (comma delimited)

### OR Retail Agency (Contacts with the Media)

Did at least one contact take place during each quarter of the reporting year? ☐

#### Media Contacts List

Number of Media Contacts	Did at least one contact take place during each quarter of the reporting year?	Media Contact Types
3		News releases
		Select a type of media contact
		Select a type of media contact
		Select a type of media contact
		Select a type of media contact
		Select a type of media contact

**Is a Wholesale Agency Performing Website Updates?**

Did one or more CUWCC wholesale agencies agree to assume your agency's responsibility for meeting the requirements of and for CUWCC reporting of this BMP? ☐ Yes ☐ No

Enter the name(s) of the wholesale agency (comma delimited)

**Is Your Agency Performing Website Updates?**

Enter your agency's URL (website address):

Describe a minimum of four water conservation related updates to your agency's website that took place during the year:

Did at least one Website Update take place during each quarter of the reporting year? ☐ Yes ☐ No

**Public Outreach Annual Budget**

Enter budget for public outreach programs. You may enter total budget in a single line or break the budget into discrete categories by entering many rows. Please indicate if personnel costs are included in the entry.

Category	Amount		Personnel Costs Included? If yes, check the box.	Comments
give aways	\$7,450		<input type="checkbox"/>	water saving devices
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	
			<input type="checkbox"/>	

Comments:

Aerators, garden hose shut-off nozzles, high efficiency showerheads, and soil moisture sensors are distributed at public events and at the City's public counters.



The fields in red are required.

Primary contact:

Agency name: City of American Canyon

First name: Lou

Reporting unit name  
(District name) City of American Canyon

Last name: Leet

Reporting unit number: 44

Email: LLEET@ci.american-canyon.ca.gov

Click here to open a table that displays your agency name reporting unit name and reporting unit number. Please ensure that you enter the correct information.



# 2010

[Link to FAQs](#)

## BMP 2.1 Public Outreach Cont'd

[View MOU](#)

### Public Outreach Expenses

Enter expenses for public outreach programs. Please include the same kind of expenses you included in the question related to your budget (Section 2.1.7, above). For example, if you included personnel costs in the budget entered above, be sure to include them here as well.

Expense Category	Expense Amount	Personnel Costs Included?	
devices		<input type="checkbox"/>	If yes, check the check box.
		<input type="checkbox"/>	
		<input type="checkbox"/>	
		<input type="checkbox"/>	

### Additional Public Information Program

Please report additional public information contacts. List these additional contacts in order of how your agency views their importance / effectiveness with respect to conserving water, with the most important/ effective listed first (where 1 = most important).

Were there additional Public Outreach efforts?

☐ Yes ☐ No

### Public Outreach Additional Information

Public Information Programs	Importance	

### Social Marketing Programs

#### Branding

Does your agency have a water conservation "brand," "theme" or mascot? ☒ Yes ☐ No

Describe the brand, theme or mascot.

If we each save a little, we all save a lot.

### Market Research

Have you sponsored or participated in market research to refine your message? ☐ Yes ☒ No

Market Research Topic

Brand Message

Brand Mission Statement

### Community Committees

Do you have a community conservation committee?

☒ Yes ☐ No

Enter the names of the community committees:

Blue Ribbon Water

### Training

Training Type	# of Trainings	# of Attendees	Description of Other

### Social Marketing Expenditures

#### Public Outreach Social Marketing Expenses

Expense Category	Expense Amount	Description

### Partnering Programs - Partners

Name

Type of Program

☐ CLCA?

☒ Green Building Programs?

☒ Master Gardeners?

☐ Cooperative Extension?

☐ Local Colleges?

☒ Other

☐ Retail and wholesale outlet; name(s) and type(s) of programs:

### Partnering Programs - Newsletters

Number of newsletters per year

Number of customers per year

**Partnering with Other Utilities**

Describe other utilities your agency partners with, including electrical utilities

PG&E, City of Napa, Bay Area Water Agencies Conservation Group

**Conservation Gardens**

Describe water conservation gardens at your agency or other high traffic areas or new

**Landscape contests or awards**

Describe water wise landscape contest or awards program conducted by your agency

Comments:





The fields in red are required.



Agency name: City of American Canyon  
Reporting unit name (District name): City of American Canyon  
Reporting unit number: 44  
Primary contact: First name: Lou  
Last name: Leet  
Email: LLEET@ci-american-canyon.ca.gov

Click here to open a table that displays your agency name reporting unit name and reporting unit number. Please ensure that you enter the correct information.

[Link to FAQs](#)

[View MOU](#)

# 2010

## BMP 2.2 School Education Programs, Retail Agencies School Programs

Is a wholesale agency implementing school programs which can be counted to help your agency comply with this BMP?

☐ Yes ☐ No

Enter Wholesaler Names, separated by commas:

☐ Materials meet state education framework requirements?

Description of Materials

☐ Materials distributed to K-6 Students?

Description of materials distributed to K-6 Students

Number of students reached

☐ Materials distributed to 7-12 Students?

Description of materials distributed to 7-12 Students

Number of Distribution

Annual budget for school education program

Description of all other water supplier education programs

### School Program Activities

Classroom presentations:

Number of presentations

0

Number of attendees

0

Large group assemblies:

Number of presentations

0

Number of attendees

Children's water festivals or other events:

Number of presentations

0

Number of attendees

Cooperative efforts with existing science/water education programs (various workshops, science fair awards or judging) and follow-up:

Number of presentations

0

Number of attendees

Other methods of disseminating information (i.e. themed age-appropriate classroom loaner kits):

Description

Number distributed

**Staffing children's booths at events & festivals:**

Number of booths

Number of attendees

**Water conservation contests such as poster and photo:**

Description

Number distributed

**Offer monetary awards/funding or scholarships to students:**

Number Offered

Total Funding

**Teacher training workshops:**

Number of presentations

Number of attendees

**Fund and/or staff student field trips to treatment facilities, recycling facilities, water conservation gardens, etc.:**

Number of tours or field trips

Number of participants

**College internships in water conservation offered:**

Number of internships

Total funding

**Career fairs/workshops:**

Number of presentations

Number of attendees

**Additional program(s) supported by agency but not mentioned above:**

Description

Number of events (if applicable)

Number of participants

**Total reporting period budget expenditures for school education programs (include all agency costs):**

Comments

Daily Use calcs from City's Meter Readings (wholesale) excluding ag water

	Pop	Gross Use (mgd)	Annual per Capita	Required Period for CUWCC GPCD Baseline Calc	Average Annual for CUWCC Period	CUWCC 2018 Target (82% of Baseline)	SBx7-7 Targets without process water exclusion		SBx7-7 Targets with process water exclusion	
							2015	2020	2015	2020
1994	8,942		0							
1995	8,954		0							
1996	9,158	1.57	171							
1997	9,307	1.62	174							
1998	9,435	1.60	170							
1999	9,558	1.78	186							
2000	9,774	1.95	200							
2001	10,679	2.2	206							
2002	11,584	2.52	218							
2003	12,489	2.74	219							
2004	13,394	3.09	231							
2005	14,300	3.19	223							
2006	15,331	3.15	205		203.16	166.59	189	168	170	151
2007	16,362	3.4	208							
2008	17,392	3.59	206							
2009	18,423	2.99	162							
2010	19,454		137							



## TARGETS / COMPLIANCE (CUWCC MOU)

Baseline / Initial GPCD  
(Use option buttons to select)

GPCD in 2006 205.0  
Baseline GPCD (1997 to 2006) 203.0

GPCD in 2010 137.0  
GPCD Target for 2018 167.0

Potable Water GPCD for each Year in the  
Baseline Period

Year	GPCD
2006	205.0
2005	223.0
2004	231.0
2003	219.0
2002	218.0
2001	206.0
2000	200.0
1999	186.0
1998	170.0
1997	174.0

Biennial GPCD Compliance Table

Year	Report	Target		Highest Acceptable Bound	
		% Base	GPCD	% Base	GPCD
2010	1	96.4%	195.9	100%	203.0
2012	2	92.8%	188.4	96.4%	195.7
2014	3	89.2%	181.1	92.8%	188.4
2016	4	85.6%	173.8	89.2%	181.1
2018	5	82.0%	166.5	82.0%	166.5

Monthly GPCD Data for Weather Normalization

Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2010												
Baseline avg*												

\* The average for each month is based on the baseline period 1997 to 2006





**Table I-2 Urban Water Management Plan checklist, organized by subject**

No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
<b>PLAN PREPARATION</b>				
4	Coordinate the preparation of its plan with other appropriate agencies in the area, including other water suppliers that share a common source, water management agencies, and relevant public agencies, to the extent practicable.	10620(d)(2)		Table 1.2
6	Notify, at least 60 days prior to the public hearing on the plan required by Section 10642, any city or county within which the supplier provides water that the urban water supplier will be reviewing the plan and considering amendments or changes to the plan. Any city or county receiving the notice may be consulted and provide comments.	10621(b)		Table 1.3
7	Provide supporting documentation that the UWMP or any amendments to, or changes in, have been adopted as described in Section 10640 et seq.	10621(c)		Table 1.3
54	Provide supporting documentation that the urban water management plan has been or will be provided to any city or county within which it provides water, no later than 60 days after the submission of this urban water management plan.	10635(b)		Table 1.3
55	Provide supporting documentation that the water supplier has encouraged active involvement of diverse social, cultural, and economic elements of the population within the service area prior to and during the preparation of the plan.	10642		Table 1.3
56	Provide supporting documentation that the urban water supplier made the plan available for public inspection and held a public hearing about the plan. For public agencies, the hearing notice is to be provided pursuant to Section 6066 of the Government Code. The water supplier is to provide the time and place of the hearing to any city or county within which the supplier provides water. Privately-owned water suppliers shall provide an equivalent notice within its service area.	10642		Table 1.3
57	Provide supporting documentation that the plan has been adopted as prepared or modified.	10642		Appendix A
58	Provide supporting documentation as to how the water supplier plans to implement its plan.	10643		Table 1.4

No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
59	Provide supporting documentation that, in addition to submittal to DWR, the urban water supplier has submitted this UWMP to the California State Library and any city or county within which the supplier provides water supplies a copy of its plan no later than 30 days after adoption. This also includes amendments or changes.	10644(a)		Section 1.3
60	Provide supporting documentation that, not later than 30 days after filing a copy of its plan with the department, the urban water supplier has or will make the plan available for public review during normal business hours	10645		Section 1.3
SYSTEM DESCRIPTION				
8	Describe the water supplier service area.	10631(a)		Section 2.1
9	Describe the climate and other demographic factors of the service area of the supplier	10631(a)		Section 2.2 Table 2.1
10	Indicate the current population of the service area	10631(a)	Provide the most recent population data possible. Use the method described in "Baseline Daily Per Capita Water Use." See Section M.	Section 2.3 Table 2.2
11	Provide population projections for 2015, 2020, 2025, and 2030, based on data from State, regional, or local service area population projections.	10631(a)	2035 and 2040 can also be provided to support consistency with Water Supply Assessments and Written Verification of Water Supply documents.	Table 2.3
12	Describe other demographic factors affecting the supplier's water management planning.	10631(a)		Section 2.3
SYSTEM DEMANDS				
1	Provide baseline daily per capita water use, urban water use target, interim urban water use target, and compliance daily per capita water use, along with the bases for determining those estimates, including references to supporting data.	10608.20(e)		Section 3.1 Table 3.4
2	<i>Wholesalers:</i> Include an assessment of present and proposed future measures, programs, and policies to help achieve the water use reductions. <i>Retailers:</i> Conduct at least one public hearing that includes general discussion of the urban retail water supplier's implementation plan for complying with the Water Conservation Bill of 2009.	10608.36 10608.26(a)	Retailers and wholesalers have slightly different requirements	Section 1.3



No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
3	Report progress in meeting urban water use targets using the standardized form.	10608.40		Not Applicable
25	Quantify past, current, and projected water use, identifying the uses among water use sectors, for the following: (A) single-family residential, (B) multifamily, (C) commercial, (D) industrial, (E) institutional and governmental, (F) landscape, (G) sales to other agencies, (H) saline water intrusion barriers, groundwater recharge, conjunctive use, and (I) agriculture.	10631(e)(1)	Consider 'past' to be 2005, present to be 2010, and projected to be 2015, 2020, 2025, and 2030. Provide numbers for each category for each of these years.	Table 3.11 Table 3.12 Table 3.14 Table 3.15 Table 3.16
33	Provide documentation that either the retail agency provided the wholesale agency with water use projections for at least 20 years, if the UWMP agency is a retail agency, OR, if a wholesale agency, it provided its urban retail customers with future planned and existing water source available to it from the wholesale agency during the required water-year types	10631(k)	Average year, single dry year, multiple dry years for 2015, 2020, 2025, and 2030.	Section 3.3 Table 3.23
34	Include projected water use for single-family and multifamily residential housing needed for lower income households, as identified in the housing element of any city, county, or city and county in the service area of the supplier.	10631.1(a)		Section 3.2.6 Table 3.22
<b>SYSTEM SUPPLIES</b>				
13	Identify and quantify the existing and planned sources of water available for 2015, 2020, 2025, and 2030.	10631(b)	The 'existing' water sources should be for the same year as the "current population" in line 10. 2035 and 2040 can also be provided.	Table 4.1
14	Indicate whether groundwater is an existing or planned source of water available to the supplier. If yes, then complete 15 through 21 of the UWMP Checklist. If no, then indicate "not applicable" in lines 15 through 21 under the UWMP location column.	10631(b)	Source classifications are: surface water, groundwater, recycled water, storm water, desalinated sea water, desalinated brackish groundwater, and other.	Section 4.2
15	Indicate whether a groundwater management plan been adopted by the water supplier or if there is any other specific authorization for groundwater management. Include a copy of the plan or authorization.	10631(b)(1)		Section 4.2
16	Describe the groundwater basin.	10631(b)(2)		Not Applicable
17	Indicate whether the groundwater basin is adjudicated? Include a copy of the court order or decree.	10631(b)(2)		Not Applicable

No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
18	Describe the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. If the basin is not adjudicated, indicate “not applicable” in the UWMP location column.	10631(b)(2)		Not Applicable
19	For groundwater basins that are not adjudicated, provide information as to whether DWR has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition. If the basin is adjudicated, indicate “not applicable” in the UWMP location column.	10631(b)(2)		Not Applicable
20	Provide a detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years	10631(b)(3)		Table 4.3
21	Provide a detailed description and analysis of the amount and location of groundwater that is projected to be pumped.	10631(b)(4)	Provide projections for 2015, 2020, 2025, and 2030.	Table 4.4
24	Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.	10631(d)		Section 4.3 Table 4.5
30	Include a detailed description of all water supply projects and programs that may be undertaken by the water supplier to address water supply reliability in average, single-dry, and multiple-dry years, excluding demand management programs addressed in (f)(1). Include specific projects, describe water supply impacts, and provide a timeline for each project.	10631(h)		Section 4.6
31	Describe desalinated water project opportunities for long-term supply, including, but not limited to, ocean water, brackish water, and groundwater.	10631(i)		Section 4.4
44	Provide information on recycled water and its potential for use as a water source in the service area of the urban water supplier. Coordinate with local water, wastewater, groundwater, and planning agencies that operate within the supplier's service area.	10633		Section 4.5
45	Describe the wastewater collection and treatment systems in the supplier's service area, including a quantification of the amount of wastewater collected and treated and the methods of wastewater disposal.	10633(a)		Section 4.5.1

No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
46	Describe the quantity of treated wastewater that meets recycled water standards, is being discharged, and is otherwise available for use in a recycled water project.	10633(b)		Table 4.6
47	Describe the recycled water currently being used in the supplier's service area, including, but not limited to, the type, place, and quantity of use.	10633(c)		Section 4.5.2
48	Describe and quantify the potential uses of recycled water, including, but not limited to, agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, groundwater recharge, indirect potable reuse, and other appropriate uses, and a determination with regard to the technical and economic feasibility of serving those uses.	10633(d)		Table 4.7
49	The projected use of recycled water within the supplier's service area at the end of 5, 10, 15, and 20 years, and a description of the actual use of recycled water in comparison to uses previously projected.	10633(e)		Table 4.9
50	Describe the actions, including financial incentives, which may be taken to encourage the use of recycled water, and the projected results of these actions in terms of acre-feet of recycled water used per year.	10633(f)		Table 4.10
51	Provide a plan for optimizing the use of recycled water in the supplier's service area, including actions to facilitate the installation of dual distribution systems, to promote recirculating uses, to facilitate the increased use of treated wastewater that meets recycled water standards, and to overcome any obstacles to achieving that increased use.	10633(g)		Section 3.2.2 Appendix D
<b>WATER SHORTAGE RELIABILITY AND WATER SHORTAGE CONTINGENCY PLANNING <sup>b</sup></b>				
5	Describe water management tools and options to maximize resources and minimize the need to import water from other regions.	10620(f)		Section 3.2.2 Appendix D
22	Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage and provide data for (A) an average water year, (B) a single dry water year, and (C) multiple dry water years.	10631(c)(1)		Section 5.2
23	For any water source that may not be available at a consistent level of use - given specific legal, environmental, water quality, or climatic factors - describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.	10631(c)(2)		Section 5.1
35	Provide an urban water shortage contingency analysis that specifies stages of action, including up to a 50-percent water supply reduction, and an outline of specific water supply conditions at each stage	10632(a)		Section 5.7.4 Section 5.7.5 Section 5.7.6

No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
36	Provide an estimate of the minimum water supply available during each of the next three water years based on the driest three-year historic sequence for the agency's water supply.	10632(b)		Table 5.3 thru Table 5.8
37	Identify actions to be undertaken by the urban water supplier to prepare for, and implement during, a catastrophic interruption of water supplies including, but not limited to, a regional power outage, an earthquake, or other disaster.	10632(c)		Section 5.7.3 Table 5.15
38	Identify additional, mandatory prohibitions against specific water use practices during water shortages, including, but not limited to, prohibiting the use of potable water for street cleaning.	10632(d)		Section 5.7.4 Table 5.16
39	Specify consumption reduction methods in the most restrictive stages. Each urban water supplier may use any type of consumption reduction methods in its water shortage contingency analysis that would reduce water use, are appropriate for its area, and have the ability to achieve a water use reduction consistent with up to a 50 percent reduction in water supply.	10632(e)		Section 5.7.4 Table 5.14
40	Indicated penalties or charges for excessive use, where applicable.	10632(f)		Table 5.17
41	Provide an analysis of the impacts of each of the actions and conditions described in subdivisions (a) to (f), inclusive, on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.	10632(g)		Section 5.7.5 Table 5.18 Table 5.19
42	Provide a draft water shortage contingency resolution or ordinance.	10632(h)		Section 5.7.6
43	Indicate a mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency analysis.	10632(i)		Section 5.7.7
52	Provide information, to the extent practicable, relating to the quality of existing sources of water available to the supplier over the same five-year increments, and the manner in which water quality affects water management strategies and supply reliability	10634	For years 2010, 2015, 2020, 2025, and 2030	Section 5.4 Table 5.9

No.	UWMP requirement <sup>a</sup>	Calif. Water Code reference	Additional clarification	UWMP location
53	Assess the water supply reliability during normal, dry, and multiple dry water years by comparing the total water supply sources available to the water supplier with the total projected water use over the next 20 years, in five-year increments, for a normal water year, a single dry water year, and multiple dry water years. Base the assessment on the information compiled under Section 10631, including available data from state, regional, or local agency population projections within the service area of the urban water supplier.	10635(a)		Table 5.11 Table 5.12 Table 5.13
<b>DEMAND MANAGEMENT MEASURES</b>				
26	Describe how each water demand management measures is being implemented or scheduled for implementation. Use the list provided.	10631(f)(1)	Discuss each DMM, even if it is not currently or planned for implementation. Provide any appropriate schedules.	Section 6.1
27	Describe the methods the supplier uses to evaluate the effectiveness of DMMs implemented or described in the UWMP.	10631(f)(3)		Section 6.3 Section 6.4
28	Provide an estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the ability to further reduce demand.	10631(f)(4)		Section 6.5 Table 6.2 Table 6.3
29	Evaluate each water demand management measure that is not currently being implemented or scheduled for implementation. The evaluation should include economic and non-economic factors, cost-benefit analysis, available funding, and the water suppliers' legal authority to implement the work.	10631(g)	See 10631(g) for additional wording.	Section 6.1
32	Include the annual reports submitted to meet the Section 6.2 requirements, if a member of the CUWCC and signer of the December 10, 2008 MOU.	10631(j)	Signers of the MOU that submit the annual reports are deemed compliant with Items 28 and 29.	Appendix G

a The UWMP Requirement descriptions are general summaries of what is provided in the legislation. Urban water suppliers should review the exact legislative wording prior to submitting its UWMP.

b The Subject classification is provided for clarification only. It is aligned with the organization presented in Part I of this guidebook. A water supplier is free to address the UWMP Requirement anywhere with its UWMP, but is urged to provide clarification to DWR to facilitate review.